

Message

From: Laura Skaer [Iskaer@miningamerica.org]
Sent: 1/19/2018 4:57:55 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Re: Laura in DC

Byron,

Have you had a chance to check your schedule to see if we can schedule a time after 2 pm on the 30th? If that doesn't work, let me know a time that will and I'll try to make it work.

thanks

Laura

Does any time after 2 pm work?

Laura Skaer
Sent from my iPhone

On Jan 16, 2018, at 8:40 AM, Brown, Byron <brown.byron@epa.gov> wrote:

Hi Laura – I should have some free time Jan. 30. Are there any times that day that work for you?

From: Laura Skaer [<mailto:Iskaer@miningamerica.org>]
Sent: Tuesday, January 9, 2018 12:56 PM
To: Brown, Byron <brown.byron@epa.gov>
Subject: Laura in DC

Hi Byron,

Happy New Year!

I'll be in DC from Jan 29 through Feb.1 and would like to schedule a meeting with you at your convenience. My schedule is pretty wide open at this point in time.

Thank you

Laura Skaer
Executive Director
American Exploration & Mining Association
10 N Post St Ste 305
Spokane WA 99201
(509)-624-1158 **Ex. 6**
Iskaer@miningamerica.org
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[@TheMoreYouDig](#)

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Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 1/17/2018 6:12:19 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Re: Laura in DC

Byron,

Does any time after 2 pm on Jan 30 work?

Laura Skaer
Sent from my iPhone

On Jan 16, 2018, at 8:40 AM, Brown, Byron <brown.byron@epa.gov> wrote:

Hi Laura – I should have some free time Jan. 30. Are there any times that day that work for you?

From: Laura Skaer [<mailto:lskaer@miningamerica.org>]
Sent: Tuesday, January 9, 2018 12:56 PM
To: Brown, Byron <brown.byron@epa.gov>
Subject: Laura in DC

Hi Byron,

Happy New Year!

I'll be in DC from Jan 29 through Feb.1 and would like to schedule a meeting with you at your convenience. My schedule is pretty wide open at this point in time.

Thank you

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Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 1/16/2018 5:12:46 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Re: Laura in DC

Does anytime after 2 pm work?

Laura Skaer
Sent from my iPhone

On Jan 16, 2018, at 8:40 AM, Brown, Byron <brown.byron@epa.gov> wrote:

Hi Laura – I should have some free time Jan. 30. Are there any times that day that work for you?

From: Laura Skaer [<mailto:lskaer@miningamerica.org>]
Sent: Tuesday, January 9, 2018 12:56 PM
To: Brown, Byron <brown.byron@epa.gov>
Subject: Laura in DC

Hi Byron,

Happy New Year!

I'll be in DC from Jan 29 through Feb.1 and would like to schedule a meeting with you at your convenience. My schedule is pretty wide open at this point in time.

Thank you

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Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 2/14/2018 11:25:52 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Jim Kuipers
Attachments: Kuipers resume.pdf

Byron,

See attached. About 5 years old, but the most recent we have. Reg. 9 using.

Laura Skaer
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Exhibit 1
Kuipers & Associates Resumes

JAMES R. KUIPERS, P.E.
P.O. Box 641, Butte, MT Ex. 6
Phone Ex. 6
E-mail jkuipers@kuipersassoc.com

SUMMARY OF EXPERIENCE

Over 30 years experience in mining and environmental process engineering design, operations management, regulatory compliance, waste remediation, reclamation and closure, and financial assurance. Over 15 years experience providing technical assistance to public interest groups and tribal, local, state and federal governments on technical aspects of mining and environmental issues.

EDUCATION

Montana College of Mineral Science and Technology, B.S. Mineral Process Engineering, 1983.

PROFESSIONAL REGISTRATION

Professional Engineer (PE Mining/Minerals): Colorado (No. 30262), Montana (No. 7809 & Corp. No. 197)

PROFESSIONAL EXPERIENCE

1996 to Present **Kuipers & Associates/J. Kuipers Engineering, Butte, MT.**

- *ABN AMRO Bank, Netherlands*: Consulting Engineer, confidential mine evaluation.
- *Amigos Bravos, Taos, NM*: Consulting Engineer, MolyCorp Questa Mine, technical review committee and working group member in reclamation and closure/closeout permitting and bonding process.
- *Anaconda Deer Lodge County, MT*: Consulting Engineer/Project Manager, Anaconda Superfund Site, provide technical services related to institutional controls, property conveyance and redevelopment, property and facility operation and maintenance, review of regulatory documents, renewable energy development, air and water monitoring and other tasks related to county involvement in Superfund activities.
- *Bannock Technologies, Pocatello, ID*: Consulting Engineer, Shoshone Bannock Tribe mining oversight project studies.
- *Blackfoot Legacy, Lincoln, MT*: Consulting Engineer, McDonald Project, review of project feasibility and environmental issues.
- *Border Ecology Project, Santa Fe, NM*: Consulting Engineer, Cananea Project (Mexico), consulting engineer mine reclamation and closure planning.
- *Cabinet Resource Group, Noxon, MT*: Consulting Engineer, Rock Creek Project, review of proposed tailing impoundment.
- *Clark Fork River Technical Advisory Committee, Missoula, MT*: Technical Advisor, Clark Fork River and Milltown Reservoir Operable Units, Upper Clark Fork Basin Superfund Sites.

- *Center for Science in Public Participation, Bozeman, MT:* See separate description below.
- *Citizens' Technical Environmental Committee, Butte, MT:* Technical Advisor, Butte-Silver Bow Site Operable Units, Upper Clark Fork Basin Superfund Sites.
- *Cottonwood Resource Council, Big Timber, MT:* Consulting Engineer, Lodestar Mine and Mill, review of operating and MPDES permits, financial assurance and operations data.
- *Earthjustice, Bozeman, MT:* Consulting Engineer, Montanore and Rock Creek Projects permitting process.
- *Earthworks, Washington, D.C.:* Project Manager and co-author, Water Quality Predictions and NEPA/EIS Studies.
- *Environmental Defender Law Center, Bozeman, MT:* Expert Witness and Consulting Engineer, Boliden Promet, Chile arsenic waste disposal.
- *Gila Resources Information Project, Silver City, NM:* Consulting Engineer, Phelps Dodge Chino, Cobre and Tyrone Mines, reclamation and closure/closeout permitting and bonding process.
- *Great Basin Mine Watch, Reno, NV:* Expert Witness and Consulting Engineer, various NV projects, permitting and reclamation and closure/closeout permitting and bonding process.
- *ICF International, Stafford, VA:* Consulting Engineer, 108(b) rulemaking technical support contract including financial assurance cost estimation model evaluations.
- *Johnson County, KS:* Consulting Engineer, Sunflower Limestone Mine reclamation plan and financial assurance.
- *Little Salmon Carmacks First Nation, Yukon Territory, Canada:* Expert Witness and Consulting Engineer, Carmacks Copper Project.
- *Montana Attorney Generals Office, Helena, MT:* Consulting Engineer, assist in defense of I-137 Open Pit Cyanide Mine Ban appeals.
- *Montana Department of Environmental Quality, Helena, MT:* General Contractor, Pony Mill Site Reclamation.
- *Montana Environmental Information Center, Helena, MT and National Wildlife Federation, Missoula, MT:* Expert Witness and Consulting Engineer, Golden Sunlight Mine, EIS Review and assist appeal of State operating permit.
- *Montana Environmental Information Center, Helena, MT:* Expert Witness, Bull Mountain Coal Mine appeal.
- *Montana Trout Unlimited, Missoula, MT:* Consulting Engineer, Trout Unlimited's Four Mines Campaign, review and provide technical assistance on McDonald, Crandon, New World and Rock Creek Mines.
- *Natural Resources Defense Council, New York State:* Consulting Engineer, review of Oil & Gas Draft EIS.

JAMES R. KUIPERS, PE (Page 2)

- *New Mexico Environmental Law Center, Santa Fe, NM:* Consulting Engineer, Oglebay Norton Mica Mine reclamation and financial assurance; New Mexico Environment Department Copper Rules Stakeholder Process.
- *Northern Plains Resource Council, Cottonwood Resource Council, Stillwater Protective Association, Billings, MT:* Consulting Engineer, Stillwater Mining Company Nye and East Boulder Mines, facilitate and perform technical aspects of Good Neighbor Agreement.
- *Northern Plains Resource Council, Billings, MT; Wyoming Outdoor Council, Sheridan, WY:* Consulting Engineer, Montana Statewide and Wyoming Powder River Basin Coal Bed Methane EIS.
- *Northern Plains Resource Council, Billings, MT:* Project Manager and co-author, Coal Bed Methane Produced Water Studies.
- *Northern Alaska Environmental Council, Fairbanks, AK:* Consulting Engineer, Pogo Mine NPDES permit negotiations.
- *Picuris Pueblo, Penasco, NM:* US Hill Mica Mine Reclamation Plan and financial assurance cost estimate and site reclamation project management.
- *Powder River Basin Resource Council, Sheridan, WY/Steven Adami, Buffalo, WY:* Expert Witness, Kennedy Oil IMADA POD appeals.
- *Rock Creek Alliance, Missoula, MT:* Expert Witness and Consulting Engineer, Rock Creek and Montanore Mines permitting.
- *Selkirk First Nation, Yukon Territory, Canada:* Expert Witness and Consulting Engineer, Minto Mine Project reclamation and closure and financial assurance.
- *Sheep Mountain Alliance, Telluride, CO:* Expert Witness and Consulting Engineer, Silver Bell Tailings remediation.
- *Shoshone-Paiute Tribes of the Duck Valley Reservation, NV:* Consulting Engineer, Rio Tinto Mine Reclamation and Closure.
- *Sierra Club and Mineral Policy Center:* Expert Witness, Cripple Creek and Victor Mining Company Clean Water Act case.
- *SKEO, Charlottesville, VA:* Consulting Engineer, 108(b) rulemaking technical support contract and EPA Region NEPA review and financial assurance support.
- *Southern Environmental Law Center, Charleston, SC:* Consulting Engineer, Haile Gold Mine permitting.
- *Systems Research and Applications Corporation, Fairfax, VA:* Consulting Engineer, mine cleanup and financial assurance guidelines subcontract to EPA.
- *Montana Trout Unlimited, Missoula, MT:* Consulting Engineer, I-147 initiative campaign.

JAMES R. KUIPERS, PE (Page 3)

- *Tohono O'odham Nation, San Xavier District, AZ*: Consulting Engineer, Mission Mine reclamation plan and financial assurance.
- *Trust for Public Lands, San Francisco, CA*: Consulting Engineer, Viceroy Castle Mountain Mine, evaluated pit backfill and reclamation alternatives for settlement agreement trust fund determination.
- *Walz and Associates, Albuquerque, NM*: Expert Witness and Consulting Engineer, assist in defense of New Mexico Environment Department and Mining and Minerals Division permitting and takings case (Manning v. NM).
- *Western Organization of Resource Councils, Billings, MT*: Oil and gas reclamation and financial assurance guide.
- *Western Resource Advocates, Salt Lake City, UT*: Expert Witness and Consulting Engineer, Red Leaf Resources oil shale project permitting.

1997 to 2005

Center for Science in Public Participation, Bozeman, MT.

- *Canadian Earthcare Society, Vancouver, BC*: Consulting Engineer, Brenda Mine, assist appeal of reclamation and closure permit.
- *CEE Bankwatch, Budapest, Hungary*: Consulting Engineer, Rosario Montana Mine (Romania), economic feasibility study of mine proposal.
- *Friends of the Similkameen, Hedley, BC*: Consulting Engineer, Candorado Mine, assist appeal of reclamation and closure permit.
- *Fort Belknap Tribal Council and Environment Department, Fort Belknap, MT*: Consulting Engineer, Zortman and Landusky Mines, Alternative Reclamation and Closure Plan, multiple accounts analysis working group member and technical advisor during supplemental environmental impact statement.
- *Guardians of the Rural Environment, Yarnell, AZ*: Consulting Engineer, Yarnell Project, EIS review and assist appeal of State operating permit.
- *Mineral Policy Center, Washington, D.C.*: Technical Advisor on general mining issues and Author of MPC Issue Paper.
- *National Wildlife Federation, Boulder, CO*: Consulting Engineer authoring report on Hardrock Mining Reclamation and Closure Bonding Practices in the Western United States.
- *Sakoagan Chippewa Tribes, Mole Lake Reservation, Wisconsin*: Consulting Engineer, Crandon Project, permitting process review.

1993 - 1995

Denver Mineral Engineers, Inc., Littleton, CO.

- Manager, Process Engineering Department.
- Manager, Mining and Environmental Wastewater Treatment Program

JAMES R. KUIPERS, PE (Page 4)

- *Arrowhead Industrial Water Co., San Jose, CA:* Project Manager, evaluation of reverse osmosis for mine wastewater treatment.
- *Barrick Goldstrike, USA, Elko, NV:* Project Engineer, engineering design, construction and installation of 1.5 M oz/year stainless steel electrowinning system.
- *Battle Mountain Gold, Co., Battle Mountain, NV:* Project Manager, evaluation, pilot testing, and preliminary feasibility study of wastewater treatment options for groundwater remediation of Fortitude Mine tailings area.
- *Commerce Group Corporation, Milwaukee, WI:* Project Manager, San Sebastian Gold Project, El Salvador.
- *Independence Mining Corp, Jerritt Canyon, NV:* Project Manager, technical evaluation and feasibility study of column flotation for beneficiation of refractory ores.
- *Kennecott Utah Copper, Bingham Canyon, UT:* Project Manager, design and construct stainless steel solvent extraction mixer settlers for prototype SX/EW plant.
- *Israeli Chemical Corp., Beersheeba, Israel:* Project Manager, evaluation of bromine as an alternative to cyanide gold leaching and prototype design.
- *Marston and Marston, St Louis, MO:* Project Manager, Kommunar Gold Mill Modernization Project, Kommunar, Siberia, Russia (CIS) and Suzak Polymetal Leach Circuit Evaluation and Feasibility Study, Kazakhstan (CIS).
- *Nevada Goldfields Mining Co., Denver, CO:* Project Manager, Nixon Fork Mine Preliminary Engineering Design and Feasibility Study, Concentrate Marketing Study, and environmental permitting studies.
- *Southern Pacific Railroad, Denver, CO:* Project Manager, design, construction and installation of dissolved air flotation wastewater treatment system.

1991 - 1992

Western States Minerals Corp.

- Project Manager, Northumberland Gold Mine, Round Mountain, NV.
- Corporate Senior Metallurgist, Wheat Ridge, CO. Engineering design and feasibility evaluations.

1986 - 1991

Western Gold Exploration and Mining Co. (WESTGOLD)/Minorco

- Corporate Senior Metallurgist / Project Manager, WESTGOLD, Golden, CO. Acquisitions and engineering design and feasibility evaluations, corporate acquisitions and business development group.
- Project Manager, Shamrock Resources (WESTGOLD Subs.), Reno, NV. Evaluation, engineering design and feasibility study, and prototype plant operation of refractory gold ore bioleaching technology program.
- Project Manager, Balmerton Mine, Ontario: Refractory gold ore bioleaching project and feasibility evaluation.

JAMES R. KUIPERS, PE (Page 5)

- Project Engineer, Johannesburg South Africa: Evaluation of Anglo American Corp. Pumpcell Technology.
- Mill Superintendent, Austin Gold Venture (WESTGOLD), Austin, NV.
- Shift Foreman, Inspiration Consolidated Copper Co, Globe, AZ.

1984 - 1985

Canyonlands 21st Century Corporation

- Director of Metallurgy, Blanding, UT. Project Manager, Jarbidge, NV.

1983 - 1984

Cumberland Mining Corporation

- Mill Superintendent / Head Metallurgist, Basin and Virginia City, MT.

1974 – 1980

Huckaba Construction

- Summer employment as Underground and Surface Miner, Millwright, Mill Operator, Fire Assayer, Whitehall and Cooke City, MT. Family owned small mining operation.

PRESENTATIONS and PUBLICATIONS

- *Financial Assurance Regulations and Cost Estimation at US Hardrock Mines*, U.S. Chile Mining Financial Assurance Seminar, US Office of Surface Mining and Environmental Protection agency and Chilean Ministry of Mining, Santiago, Chile, May 2012.
- *Mining Reclamation and Closure Regulations and Best Practices*, 2012 International Conference on Mining in Mindanao, Ateneo de Davao University, Davao City, Philippines, January 26-27, 2012.
- *Beyond the Global Acid Rock Drainage Guide*, Lake Superior Binational Program, Mining in the Lake Superior Basin Webinar Series, Environmental Impacts of Mining in the Lake Superior Basin, October 27, 2009
- *Characterizing, Predicting, and Modeling Water at Mine Sites*, California Environmental Protection Agency, California Water Board Training Academy, May 18 - 21, 2009
- *Mitigating Mining Impacts: Principles and Practices*, Lake Superior Binational Program, Mining in the Lake Superior Basin Webinar Series, Environmental Impacts of Mining in the Lake Superior Basin, March 24, 2009
- *Long-term Requirements & Financial Assurance at Superfund & Other Mine Sites*, Mine Design, Operations and Closure Conference, Fairmont Hot Springs, MT, April 2008.
- *The Effects of Coalbed Methane Production on Surface and Ground Water Resources*, Committee on Earth Resources, Board on Earth Sciences and Resources, National Research Council, Meeting on the Status of Data and Management Regarding the Effects of Coalbed Methane Production on Surface and Ground Water Resources, Denver, Colorado, April 2008.

JAMES R. KUIPERS, PE (Page 6)

- *Reclamation Planning and Financial Assurance Practice in the United States*, Kamchatka Mining Conference, Kamchatka Oblast People's Council of Deputies, the Committee on Ecology and Resource Management of Kamchatsky Krai, the Rosprirodnadzor Division of Kamchatka Oblast and Koryaksky Autonomous Okrug, the Division for Minerals Management for Kamchatka Krai, and the Kamchatka Oblast Council of the All-Russia Society for Nature Protection, Petropavlovsk-Kamchatsky, Russia, October 2007.
- *The Good Neighbour Agreement: A Proactive Approach to Water Management through Community Enforcement of Site-Specific Standards*, w Sarah Zuzulock, Greener Management International, Issue 53, Spring 2006, Greenleaf Publishing. 2007.
- *Sustainable Development at the Anaconda Superfund Site*, Mine Design, Operations and Closure Conference, Fairmont Hot Springs, MT, April 2007.
- *Comparison of Predicted and Actual Water Quality at Hardrock Mines: The reliability of predictions in Environmental Impact Statements* with A. Maest, K. MacHardy, G. Lawson. *Predicting Water Quality at Hardrock Mines: Methods and Models, Uncertainties, and State-of-the-Art* with A. Maest, Final Report Release December 2006.
- *Reclamation and Bonding in Copper Mining*, U.S. EPA Hardrock 2006: Sustainable Modern Mining Applications, Tucson, Arizona, November 2006.
- *Sustainable Development at the Anaconda Superfund Site*: U.S. EPA Hardrock 2006: Sustainable Modern Mining Applications, Tucson, Arizona, November 2006.
- *U.S. Perspective on Financial Assurance for Mine Cleanup*, presented at International Bar Association Conference, Chicago, Illinois, September 2006.
- *Comparison of Predicted and Actual Water Quality at Hardrock Mines: The reliability of predictions in Environmental Impact Statements* with A. Maest, K. MacHardy, G. Lawson, presented at Mine Design, Operations and Closure Conference, Fairmont Hot Springs, MT, April 2006.
- *Predicted Versus Actual Water Quality at Hardrock Mine Sites: Effect of Inherent Geochemical and Hydrological Characteristics* with A. Maest, K. MacHardy, and G. Lawson at International Congress on Acid Rock Drainage (ICARD), March 2006, St. Louis, MS.
- *Oil, Gas and Coal Bed Methane Reclamation and Financial Assurance Guide*, with Kimberley MacHardy and Victoria Lynne, November 2005; 12th International Petroleum Environmental Conference, Houston, TX.
- *Approaches to Abandoned Mine Site Assessment and Remedy Selection in the U.S.*, NOAMI Workshop on Assessing Liabilities and Funding Options, November 2, 2005 Ottawa, Canada
- *Filling the Gaps: How to Improve Oil and Gas Reclamation and Reduce Taxpayer Liability*, Kuipers & Associates for Western Organization of Resource Councils, August 2005.
- *The Environmental Legacy of Mining in New Mexico*, Mining in New Mexico: The Environment, Water, Economics and Sustainable Development, New Mexico Bureau of Geology and Mineral Resources, Decision-Makers Field Conference 2005, L. Greer Price et al Editors.

JAMES R. KUIPERS, PE (Page 7)

- *Financial Assurance and Bonding*, 2005 Decision-Makers Field Conference, Mining in New Mexico: The Environment, Water, Economics and Sustainable Development, New Mexico Bureau of Geology and Mineral Resources, May 2005.
- *Evaluation of the NEPA Process for Estimating Water Quality Impacts at Hardrock Mine Sites* with A. Maest, K. MacHardy, G. Lawson, for Earthworks, presented at Society of Mining Engineers Annual Conference, Salt Lake City, UT, March 2005 and Mine Design, Operations and Closure Conference, Polson, MT, April 2005.
- *Evaluation of Methods and Models Used to Predict Water Quality at Hardrock Mine Sites: Sources of uncertainty and recommendations for improvement* with A. Maest, C. Travers and D. Atkins, for Earthworks, presented at Society of Mining Engineers Annual Conference, Salt Lake City, UT, March 2005 and Mine Design, Operations and Closure Conference, Polson, MT, April 2005.
- *Coal Bed Methane-Produced Water: Management Options for Sustainable Development*, co-authored with K. MacHardy, W. Merschat and T. Myers, presented at Coal Bed Natural Gas Research, Monitoring and Applications Conference, Laramie, WY, August 2004; 11th International Petroleum Environmental Conference, Albuquerque, NM, October 2004; Northern Plains Resource Council Annual Meeting, November 2004.
- *Technology-Based Effluent Limitations for Coal Bed Methane-Produced Wastewater Discharges in the Powder River Basin of Montana and Wyoming*, Northern Plains Resource Council, Billings, MT, November 2004.
- *Financial Assurance Guidelines for Hardrock Mine Cleanup*, Mine Design, Operations and Closure Conference, Polson, MT, April 2004.
- *Introduction to Mine Water Treatment*, Mine Discharge Water Treatment Short Course, Mine Design, Operations and Closure Conference, Polson, MT, April 2004.
- *Coal Bed Methane: A Design and Process Overview of Production and Produced Water*, presented as short course at Joint Engineers Conference, Helena, MT, November 2003.
- *The Good Neighbor Agreement between Stillwater Mining Company and Northern Plains Resource Councils: An Example of Industry and Citizen Cooperation*, presented as a short course at Joint Engineers Conference, Helena, MT, November 2003.
- *Reclamation and Financial Assurance for Mines on or Impacting Tribal Land*, presented at U.S. EPA Workshop on Mining Impacted Native American Lands, Reno, NV, September 2003.
- *Reclamation and Financial Assurance from a Public Interest Perspective*, presented at U.S. Forest Service National Geofest, Park City, UT, September 2003.
- *U.S. State and Federal Policies on Financial Assurance Forms for Hardrock Mines*, presented at New Mexico Financial Assurance Forum, Santa Fe, NM, May 2003.
- *Public Interest Perspective on Land Application Disposal*, presented at Mine Design, Operations and Closure Conference, Polson, MT, April 2003.

- *Putting a Price on Pollution: Financial Assurance for Mine Reclamation and Closure*, Mineral Policy Center, Washington, D.C., March 2003.
- Testimony to the Subcommittee on Energy and Mineral Resources, Committee on Resources, U.S. House of Representatives, Hearing on "Availability of Bonds to Meet Federal Requirements for Mining, Oil and Gas Projects." Washington, D.C., July 23, 2002.
- *Mine Closure and Financial Assurance: Can the Mining Industry Afford It's Legacy?*, presented at Global Mining Initiative Conference, Toronto, Canada, May 2002.
- *The Role of the Center for Science in Public Participation in Mining Environmental Issues, with Perspective for Regulators and Industry*, presented at Canadian Institute of Mining and Metallurgical Engineers Conference, Vancouver, Canada, May 2002 and U.S. EPA Hardrock Mining Conference, Denver, Colorado, May 2002.
- *The Good Neighbor Agreement between Stillwater Mining Company and the Northern Plains Resource Councils: The Formation and Implementation of a New Approach to Addressing Environmental and Community Relations Issues*, presented at U.S. EPA Hardrock Mining Conference, Denver, Colorado, May 2002.
- *Underground Hard-Rock Mining: Subsidence and Hydrologic Environmental Impacts*, Center for Science in Public Participation, Bozeman, MT, February 2002. Co-authored with S. Blodgett.
- *Review of the Multiple Accounts Analysis Alternatives Evaluation Process Completed for the Reclamation of the Zortman and Landusky Mine Sites*; presented at National Association of Abandoned Mine Lands Annual Conference, Athens, Ohio, August 2001. Co-authored with S.C. Shaw, A.M. Robertson, W.C. Maehl and S. Haight.
- *Full Reclamation and Closure Plan, Phelps Dodge Tyrone Mine, Grant County, NM*; Gila Resources Information Project, Silver City, NM, July 2001. Co-authored with S. Blodgett.
- *Reclamation Bonding for Hardrock Metal Mines Workshop*; presented by CSP2 at Juneau and Fairbanks, AK, July 2001.
- *Full Reclamation and Closure Plan, Phelps Dodge Chino Mine, Grant County, NM*; Gila Resources Information Project, Silver City, NM, June 2001. Co-authored with S. Blodgett.
- *Reclamation Bonding in Montana*; Montana Environmental Information Center, Helena, MT, November 2000. Co-authored with S. Levit.
- *Full Reclamation and Closure Plan, MolyCorp Questa Mine, NM*; Amigos Bravos, Taos, NM, May 2000.
- *Hardrock Mining Reclamation and Bonding Practices in the Western United States*; National Wildlife Federation, Boulder, CO, February 2000.
- *An Economic Evaluation of the McDonald Gold Project*; Blackfoot Legacy, Lincoln, MT, February 2000..
- *Restoring the Upper Clark Fork: Guidelines for Action*; Trout Unlimited, Missoula, MT, April 1999. Co-authored with D. Workman, B. Farling and P. Callahan.

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- *Alternative Final Reclamation and Closure Plan, Zortman and Landusky Mines, MT:* Indian Law Resource Center, Helena, MT, January 1999.
- *Reclamation Bonding Regulations of Precious Metal Heap Leach Facilities in the Western United States:* Presented at the workshop on Closure, Remediation and Management of Precious Metals Heap Leach Facilities, University of Nevada, Reno, Jan 15, 1999.
- *Wastewater Treatment Methods for Base and Precious Metal Mines:* Public Education for Water Quality Project, Northern Plains Resource Council, Billings, MT, 1996.
- *Bacterial Leaching Pilot Study – Oxidation of a Refractory Gold Bearing High Arsenic Sulphide Concentrate:* Randol Gold Forum, Squaw Valley, 1990. Co-authored with J. Chapman, B. Marchant, R. Lawrence, R. Knopp.
- *Novel Aspects of Gold Recovery Using Column Flotation at Austin Gold Venture:* Gold and Silver Recovery Innovations, Phase IV Workshop, Randol International Ltd, Sacramento, CA, 1989.

SARAH ZUZULOCK, MS, PE

Ex. 6

Bozeman, MT Ex. 6

Phone Ex. 6

E-mail szuzulock@kuipersassoc.com

SUMMARY OF EXPERIENCE

Over twelve years experience providing technical assistance to public interest groups, county and tribal government and federal agencies in mining and environmental management issues including monitoring plan design and implementation, wastewater treatment and management, water quality monitoring and reporting, mine operation and closure activities, reclamation and financial assurance review and calculation.

EDUCATION

Montana Tech of The University of Montana, Butte, Montana. M.S. Environmental Engineering, 2001.

Saint Mary's College, Notre Dame, Indiana. B.S. Biological Sciences, 1998.

PROFESSIONAL REGISTRATION

Montana State Board of Professional Engineers and Professional Land Surveyors, Professional Engineer (17368 PE), October 27, 2006

PROFESSIONAL EXPERIENCE

2004 to Present **Kuipers & Associates, Wisdom, MT**

- *Anaconda Deer Lodge County, MT:* Consulting Engineer, Anaconda Superfund Site, provide technical services related to institutional controls, property conveyance and redevelopment, operation and maintenance plans and cost estimates, review of regulatory documents, and other tasks related to county involvement in Superfund activities.
- *CLAIM GV Board, Grass Valley, CA:* Consulting Engineer, Preliminary review of Idaho Maryland Project environmental documents and plan of operations for mine development in the City of Grass Valley.
- *Clark Fork River Technical Advisory Committee, Missoula, MT:* Technical Advisor, Clark Fork River and Milltown Reservoir Operable Units, Upper Clark Fork Basin Superfund Sites.
- *Cottonwood Resource Council, Big Timber, MT:* Technical Advisor, Lodestar Mine review; Oil and Gas, development of recommended BMPs for oil and gas development and a development scenarios report.
- *Environmental Management Services, Fairfax, VA:* Consulting Engineer, NEPA reviewer

SARAH ZUZULOCK, MS, PE (Page 1)

assistance subcontract to EPA.

- *ICF International, Stafford, VA*: Consulting Engineer, 108(b) rulemaking technical support contract including financial assurance cost estimation model evaluations.
- *Northern Plains Resource Council, Cottonwood Resource Council, Stillwater Protective Association, Billings, MT*: Consulting engineer/project manager, Stillwater Mining Company Stillwater and East Boulder Mines, facilitate and perform technical aspects of Good Neighbor Agreement including data analysis and reporting, review of agency decisions including operating permit revisions, closure plans and financial assurance review.
- *Picuris Pueblo, Penasco, NM*: US Hill Mica Mine Reclamation Plan and financial assurance cost estimate and project management.
- *Selkirk First Nation, Yukon Territory, Canada*: Consulting engineer, Minto Mine project reclamation and closure financial assurance.
- *Shoshone-Paiute Tribes of the Duck Valley Reservation, NV*: Consulting Engineer, Rio Tinto Mine Reclamation and Closure. Completed environmental monitoring to evaluate for mine related impacts.
- *SKEO, Charlottesville, VA*: Consulting engineer, 108(b) rulemaking technical support and NEPA review and financial assurance support.
- *Southern Environmental Law Center, Charleston, SC*: Consulting engineer, Haile Gold Mine permitting.
- *Systems Research and Applications Corporation, Fairfax, VA*: Technical researcher, mine cleanup and financial assurance guidelines, subcontract to federal agency.
- *Stillwater County Attorney's Office, Columbus, MT*: Technical Consultant, septic permitting issue and review of county septic regulations.
- *Systems Research and Applications Corporation, Fairfax, VA*: Consulting Engineer, mine cleanup and financial assurance guidelines subcontract to EPA.
- *Tohono O'odham Nation, San Xavier District, AZ*: Consulting Engineer, Develop Mission Mine reclamation plan and financial assurance alternatives.

2001 to 2003

Center for Science in Public Participation, Bozeman, MT.

- *Northern Plains Resource Council, Cottonwood Resource Council, Stillwater Protective Association, Billings, MT*: Technical Advisor, Stillwater Mining Company Nye and East Boulder Mines, facilitate and perform technical aspects of Good Neighbor Agreement.

SARAH ZUZULOCK, MS, PE (Page 2)

- *Cottonwood Resource Council, Big Timber, MT*: Technical Advisor, Lodestar Mine, mine cleanup and management of acid generating waste rock.
- *Northern Alaska Environmental Council, Fairbanks, AK* . Conducted a review and evaluation of financial assurances held for closure for hardrock mines in the state of Alaska.

1998 to 2001

Montana Tech Mine Waste Technology Program, Butte, MT.

- Assisted in biological characterization of the Berkeley Pit and other acid mine drainage environments.
- Examined bioremediative potential of algal populations indigenous to the Berkeley Pit.

PRESENTATIONS and PUBLICATIONS

- *The Good Neighbor Agreement – A Partnership between a mining company and three communities*. Engaging Communities Conference, Iliamna, Alaska, November 2010.
- *Stillwater Mining Company, Part 2 – RealTime with George Cole*. Yellowstone Public Radio program discussing the Good Neighbor Agreement, July 26, 2010.
<http://www.ypradio.org/programs/local/realtime.html>
- *Stillwater Mining Company – RealTime with George Cole*. Yellowstone Public Radio program discussing the Good Neighbor Agreement, June 28, 2010.
<http://www.ypradio.org/programs/local/realtime.html>
- *The Good Neighbor Agreement – A Social Contract to Mine*. Securing the Future and 8th International Conference on Acid Rock Drainage, Skellefteå, Sweden, June 2009.
- *The Good Neighbor Agreement – The Model for Industry and Citizen Cooperation*. Sweet Grass County Commission, Big Timber, Montana, May, 26, 2009.
- *The Good Neighbor Agreement – The Model for Industry and Citizen Cooperation*. Stillwater County Commission, Columbus, Montana, March, 23, 2009.
- *Predicted Versus Actual Water Quality at Hardrock Mine Sites, Failure Modes and Root Causes of Water Quality Impacts*. Alaska Chapter, American Fisheries Society, Expanding Perspectives of Fisheries, Anchorage, AK, October 2008.
- *The Good Neighbor Agreement – The Model for Industry and Citizen Cooperation*. National Summit for Mining Communities, Butte, MT, September 2008.
- *The Good Neighbour Agreement: A Proactive Approach to Water Management through Community Enforcement of Site-Specific Standards*, w Jim Kuipers, Greener Management International, Issue 53, Spring 2006, Greenleaf Publishing. 2007.

SARAH ZUZULOCK, MS, PE (Page 3)

- *Mine Discharge Water Treatment Cost Estimation*, Mine Discharge Water Treatment Short Course, Mine Design, Operations and Closure Conference, Polson, MT, April 2004.
- *Financial Assurance for Hardrock Mine Cleanup*, Western Mining Action Network Conference, Vancouver, Canada, October 2003.
- *The Tiered Trigger Level Water Quality Protection Framework Utilized by the Stillwater Mining Company and the Northern Plains Resource Councils' Good Neighbor Agreement*, EPA Hardrock Mining 2002 Conference, Westminster, CO, May 2002.
- *Good Neighbor Agreement Environmental Monitoring Program*, Western Mining Action Network Conference, Albuquerque, NM, October 2001.
- *Bioremediative Potential of Chromulina freiburgensis in Culture from the Berkeley Pit*, 55th Meeting of the Phycological Society of America, Estes Park, CO, June 2001.
- *Studies of the Berkeley Pit at Montana Tech*, 31st International Geological Congress, Rio de Janeiro, Brazil, August 2000.
- *Chromulina freiburgensis Dofl. In the Berkeley Pit Lake Water System*, Northwest Algal Symposium, Yachats, OR, May 1999.

Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 2/13/2018 5:26:14 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: AML Good Samaritan Summit on April 26
Attachments: Agenda 02-08-18_Draft Final.docx; Announcement020818_DrftFnl v2.docx

Hi Byron,

Thanks again for meeting with me when I was in DC a couple of weeks ago.

I asked if EPA could provide a speaker for the AML Good Samaritan Summit sponsored by Colorado School of Mines (CSM), Mining and Metallurgical Society of America (MMSA) and Trout Unlimited (TU). I am a member of MMSA. I've attached the draft agenda and an announcement of the Summit. The objective of the Summit is to build support for demonstration/pilot project focused Good Samaritan legislation. Both Sen. Gardner and Rep. Gosar are on board with this focus as are industry and TU. We would really appreciate having an EPA representative attend and present at the Summit.

Thanks and please let me know if you have any questions.

Best

Laura Skaer
Executive Director
American Exploration & Mining Association
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[@TheMoreYouDig](#)

MINING – America's Infrastructure Starts Here





Good Samaritan Protection to Enhance Abandoned Mine Land Cleanup - Finding a Path Forward

April 26, 2018 – Colorado School of Mines

SUMMIT AGENDA

Purpose: Identify necessary liability protection from applicable environmental laws that advance closure and remediation of the identified pilot/demonstration projects.

Outcome: A diverse coalition of stakeholders working to advance pilot/demonstration projects focused through Good Samaritan legislation that enhances (or advances) AML cleanup.

Morning Plenary Session (8:00 to 10:00 AM) - Laying Out the Challenges
Laura Skaer- Session Moderator

Session Objectives: Identify Social, Political And Legal Issues Impeding Closure And Reclamation of AML Lands.

- Enhanced pathway to AML Cleanup – **Laura Skaer**; Executive Director, American Exploration & Mining Association
- State Government Considerations – **Jeff Graves**; Director, Office of Active & Inactive Mines, Colorado Division of Reclamation, Mining, and Safety
- Conservation Group Perspectives – **Chris Wood**; President, Trout Unlimited
- Private Sector / Industry Considerations – **TBD**;
- Congressional Perspective – **Dustin Sherer**; Aide to Sen. Cory Gardner

Break (10:00 to 10:15 AM)

Mid-Morning Session (10:15 to 11:45) – Issues Impacting AML clean-up
Dennis Ferrigno - Session Moderator

Session Objectives: Address Social, Political And Legal Issues Related to Enhanced AML Clean-up

- Legal Issues- ***Carolyn McIntosh***; *Squire Patton Boggs*.
- AML / Good Samaritan Political Issues – ***Kathy Benedetto***; Bureau of Land Management (*Invited*)
- Examples of Successful Reclamation and Closure (Processes and Results) to Guide Candidate Site Selection – ***Jeff Parshley***; Group Chairman and Corporate Consultant, SRK Consulting North America
- Discussion for Good Samaritan Initiative – ***TBD***, U.S. Environmental Protection Agency

Lunch (12:00 to 12:45 PM) - Compliments of MMSA

Afternoon Session (1:00 PM to 3:15 PM) - Break-out & Planning
Ann Carpenter - Session Moderator

Session Objectives: Establish Path Forward for a Successful Good Samaritan AML Demonstration

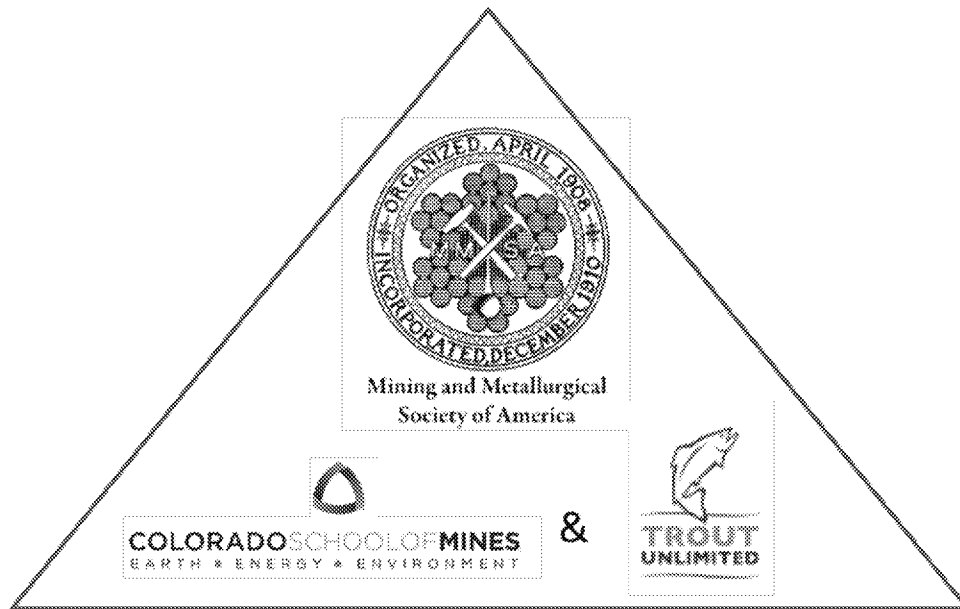
Delegates will break into multiple working groups to build consensus on the critical language and programmatic components needed to advance Good Samaritan legislation focused on pilot/demonstration projects. After the building blocks for the legislation are identified, avenues for partnership, the ideal process for selection of candidate demonstration sites, and other issues raised by the morning sessions will be discussed.

Break (3:15 PM to 3:30)

Summary Session (3:30 PM to 4:30 PM) - Feedback and Actionable Items
Ann Carpenter - Session Moderator

Session Objectives: The Goal of this final session is to fold in outcomes from the morning and early afternoon sessions, outlining the building blocks and next steps for legislation necessary to advance project-focused Good Samaritan legislation. As time allows, possible next steps will be outlined regarding avenues for partnership, the ideal process for selection of candidate demonstration sites, and other issues raised by the morning sessions.

Closing of Summit (4:30 PM)



Good Samaritan Protection to Enhance Abandoned Mine Land Cleanup Finding a Path Forward

April 26, 2018 – Colorado School of Mines

The **Mining and Metallurgical Society of America**, in conjunction with the **Colorado School of Mines** and **Trout Unlimited**, presents the Summit: *Good Samaritan Protection to Enhance Abandoned Mine Land Cleanup -- Finding a Path Forward*, to be held on the Colorado School of Mines Campus on April 26, 2018.

The Purpose of the Summit is to: **Identify necessary liability protection from applicable environmental laws that advance closure and remediation of the identified pilot/demonstration projects.**

The Summit's Outcome is: A diverse coalition of stakeholders working to advance pilot/demonstration project focused Good Samaritan legislation that enhances (or advances) AML cleanup.

The topics and summit breakout session discussions presented at the Summit will be:

- **Laying out the Challenges.** Identify social, political and legal issues impeding closure and remediation of AML Lands, including: What is needed, State Government considerations, Environmental Coalition issues, Private Sector & Industry considerations, Congressional Representative discussion.
- **Existing Issues Impacting AML Clean-up.** Address social, political and legal issues related to AML cleanup within current regulatory structure and envision potential Good Samaritan protections. Issues to be discussed include: Legal, AML/Good Samaritan, Health, Safety & Environmental, EPA discussion of Good Samaritan.
- **Break-out and Planning.** Delegates will break into multiple working groups to build consensus on the critical language and programmatic components needed to advance Good Samaritan legislation focused on pilot/demonstration projects. After the building blocks for the legislation are identified, avenues for partnership, the ideal process for selection of candidate demonstration sites, and other issues raised by the morning sessions will be discussed.
 - **Feedback and Actionable Items.** The goal of the final session is to fold in outcomes from the morning and early afternoon sessions to collaboratively establish an action plan

This Summit is intended for all stakeholders in the public, private and civil sectors with an interest in accelerating the clean-up of abandoned mines through Good Samaritan legislation.

For more information about the Summit, and to participate, contact Betty Gibbs, Executive Director, MMSA, at contactmmsa@mmsa.net or **Ex. 6** Watch the MMSA Web page for updates: <http://www.mmsa.net>.

Sign up for your free ticket.

Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 9/29/2017 3:27:28 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: RE: Meeting with Laura Skaer

Yes, 10 am on Monday.

Thank you

Laura Skaer
Executive Director
American Exploration & Mining Association
lskaer@miningamerica.org

From: Brown, Byron [mailto:brown.byron@epa.gov]
Sent: Friday, September 29, 2017 8:18 AM
To: Laura Skaer <lskaer@miningamerica.org>
Subject: RE: Meeting with Laura Skaer

Laura – confirming our meeting at 10 am on Monday.

From: Laura Skaer [mailto:lskaer@miningamerica.org]
Sent: Friday, September 22, 2017 4:29 PM
To: Brown, Byron <brown.byron@epa.gov>
Subject: Re: Meeting with Laura Skaer

I can do either. Shall we try 10 am?

Laura Skaer
Sent from my iPhone

On Sep 22, 2017, at 3:27 PM, Brown, Byron <brown.byron@epa.gov> wrote:

Let's try the morning of Oct. 2. I should be free either 10 am or 11 am.

From: Laura Skaer [mailto:lskaer@miningamerica.org]
Sent: Thursday, September 21, 2017 5:13 PM
To: Brown, Byron <brown.byron@epa.gov>
Subject: Meeting with Laura Skaer

Hi Byron,

I'm going to be in DC October 2-4 and would like to meet with you and possibly Patrick Davis on CERCLA 108(b). I am available anytime on Monday October 2; any time after 12 noon on Wednesday Oct 4; and any time before 2:15 on Thursday October 5. I'm not available on Tuesday October 3 unless that is the only time you can meet.

Thank you!

Best,

Laura Skaer
Executive Director
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www.themoreyoudig.com
@MiningAmerica
@TheMOreYouDig

MINING – America's Infrastructure Starts Here

<image001.png>

Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 4/28/2017 8:10:17 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Meeting with Laura Skaer, Matt Ellsworth and Ron McMurray

Byron,

I know you're swamped, but hoping there will be time to meet with you next week.

thanks

Hi Byron,

I hope you are enjoy your new gig. Our government affairs manager Matt Ellsworth and I will be in DC May 1 through May 4 and would like to meet with you to discuss CERCLA 108(b). Our DC representative, Ron McMurray with the Livingston Group will join us. With the exception of Monday morning and Wednesday from 2 to 3 pm, our schedule is open right now.

Thanks.

Laura Skaer
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@TheMoreYouDig

MINING – AMERICA'S INFRASTRUCTURE STARTS HERE



Message

From: Chris Hornback [CHornback@nacwa.org]
Sent: 5/10/2017 10:56:32 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
CC: Nathan Gardner-Andrews [NGardner-Andrews@nacwa.org]; Adam Krantz [AKrantz@nacwa.org]
Subject: Call Follow-up
Attachments: WRAP Concept Paper.pdf

Byron – As discussed yesterday, here is the draft concept paper for a Water Ratepayer Assistance Program. We did research to evaluate several existing programs as potential models, with the LIHEAP program rising to the top as possibly the best model. The objective is to make funding available to assist low income and other in-need populations to free up or incentivize utilities to raise rates to more fully recover the cost of providing the service. So with minimal federal funding you can remove some of the shackles from utilities/municipalities and enable them to make investments at levels we could never get to with a federal funding program alone.

Happy to discuss when you have had a chance to digest this. This is still not a fully fleshed out concept, but it has a lot of traction/support from the municipal clean water community.

-Chris

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)
(O) [Ex. 6](#) | (M) [Ex. 6](#) | chornback@nacwa.org

An Evaluation of a Federal Water Ratepayers Assistance Program

National Association of Clean Water Agencies

**AN EVALUATION OF ISSUES RELATED TO
A FEDERAL LOW-INCOME WATER RATEPAYER ASSISTANCE PROGRAM**

I. INTRODUCTION

This paper outlines issues for consideration by the National Association of Clean Water Agencies (NACWA) related to the creation of a program to provide federal assistance to help low-income households pay water utility bills. Such a Water Ratepayer Assistance Program (WRAP) could remove one of the greatest impediments to expanded water infrastructure investment. The analysis provides background on the issue, including a set of principles for the development of a WRAP initiative, examines a model for the creation of a WRAP, offers an initial issue advocacy campaign plan, and makes additional recommendations for action.

Current Challenge

Incentivize a financial environment that facilitates significant on-going infrastructure investment at the local level by the water utility sector through rate-setting that reflects the true cost of providing water treatment and yet remains affordable for low-income customers.

Proposed Solution

Establish a federal incentive program of assistance to low-income customers to help pay for the true cost of water treatment services, as is the case for other household essentials such as energy and food.

Background

The challenges facing the water sector are great. The Environmental Protection Agency (EPA) has estimated that the country faces a backlog of hundreds of billions of dollars in unmet water infrastructure needs. Building these projects could also create hundreds of thousands of jobs spread across every state. However, generating the necessary capital for these projects at affordable rates is becoming increasingly difficult, especially due to the burden on low-income ratepayers.

The first phase of federal support for water infrastructure in the U.S. took the form of construction grants, which in the second phase was converted into a construction loan program through the EPA's State Revolving Funds (SRFs). The WRAP initiative would add a phase-three financing tool for infrastructure centered on ratepayer assistance instead of relying on more utility debt. A ratepayer-centric approach to financing that incentivizes true-cost pricing while ensuring affordability for low-income customers will help ensure continuous investments in water treatment infrastructure by local communities, thereby creating jobs and improving quality of life opportunities for local residents.

The Trump administration has promised a trillion-dollar infrastructure initiative, including water projects, that would rely mainly on a package of tax credits to promote the necessary investment. President Trump has also called for tripling funding for the SRFs. These proposals have included a commitment to involve state and local water sector leaders in the development of a long-term plan for the use of these funds and the creation of an interagency task force as part of the planning.

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If possible, relying on an existing program as a model for WRAP is desirable since existing programs usually have addressed in practice many of the difficult questions of administration of a new initiative. In addition, familiarity with the existing program can make it easier to gain legislative acceptance of new proposals modelled after it.

Principles for a Water Rate-Payer Assistance Program

Having a set of general principles can be useful in evaluating different policy proposals. Based on input from NACWA members, the following is a set of 10 principles that can be used to help guide the creation of a federal WRAP initiative.

Low-Income Needs:

- Establish a ratepayer-centered model of financing that meets affordability needs by helping low-income customers pay for the cost of water services; and
- Design a program that properly serves all eligible populations including low-income water customers in public housing and multi-family dwellings.

Water Sector Role:

- Remove impediments to water utilities' ability to make water infrastructure investments through the rate-setting process;
- Make progress toward speeding up capital replacement cycles;
- Provide for state and local control over implementation and rate-setting;
- Encourage true-value of water pricing for the services utilities provide; and
- Do not require utilities to incur additional debt.

Economic and Administrative Considerations:

- Ensure continuous and sufficient investment in local economies thereby creating jobs and improving quality of life opportunities for local residents;
- Use a manageable administrative structure relying on or adapted from similar programs; and
- Maintain the current federal funding mechanism of the SRFs to complement WRAP.

Principal Finding

Based on these principles and other analysis this evaluation recommends using the Low-Income Home Energy Assistance Program (LIHEAP) as a model for a WRAP initiative. LIHEAP, with its long history and record of success providing assistance to low-income utility ratepayers, has a great deal of similarity to what is needed in WRAP. An outline of legislation modelled after LIHEPA is available in Appendix 1. Other possibilities as models that were also considered as part of this review included the Supplemental Nutrition Assistance Program (or SNAP, formerly known as food stamps), a revised and expanded SRF grant program, and a Treasury supported bond program similar to the Obama administration's Build America Better bonds (BABs). Additional information on SNAP and BABs is included respectively in Appendix 2 and 3 of this paper.

For various reasons, none of the other alternatives were recommended as models for WRAP. SNAP came closest to being such a model since an entitlement program that provided assistance directly to

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low-income water ratepayers in the same way that food assistance is provided could be very useful in addressing concerns about the impact of rising water utility rates on the needy. In the end, however, it was concluded that enactment of a major, new entitlement program for low-income households was not practical in the foreseeable future. Furthermore, the policy differences between food assistance and help in paying water bills made the use of SNAP as a model much more complicated than modelling after LIHEAP.

Neither a revised SRF grant program nor a new borrowing authority was recommended for this purpose either. In the end the policy preference was for a program that made the ratepayer the focus of the assistance instead of the water utility, even if the ratepayer might indirectly benefit from the assistance provided to the utility. Furthermore, regarding the possibility of a revised BABs program, the view of the water sector is that many financial options for borrowing already exist making additional borrowing authorities a low priority compared to direct rate-payer assistance where needed.

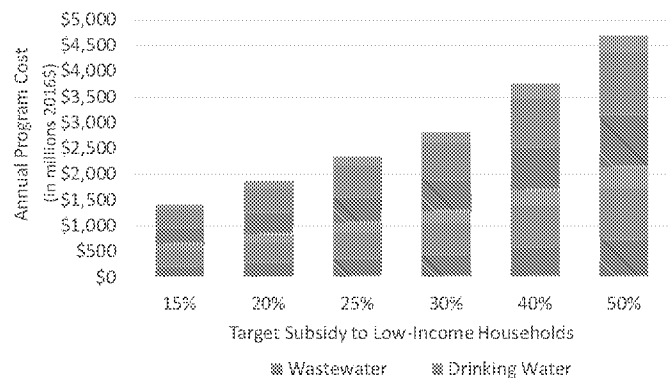
II. LIHEAP AS A MODEL FOR WRAP

LIHEAP is a federal block grant program administered by the Department of Health and Human Services (HHS) that provides financial assistance to low and fixed-income individuals for fuel and utility bills, as well as gives support to low-cost weatherization and energy-related home repairs. Congress funds LIHEAP through the annual appropriations process.

The LIHEAP statute provides two types of program funding — regular funds and emergency contingency funds. Regular funds are allotted to states in accordance with a formula prescribed in the statute. Contingency funds can be released state by state at the discretion of the President and the Secretary of HHS in response to an emergency, such as a natural disaster or unexpected price spike, after submitting a formal budget request to Congress.

LIHEAP is administered by the states, with the states having considerable flexibility in directing program funds. In addition to this federal LIHEAP assistance, state and local governments also provide their own assistance to those in need and are joined by charitable groups funded by donations. Many utilities also provide assistance to their customers outside of LIHEAP through actions paid for by their own revenues, including offering discounts, fee waivers, arrearage forgiveness, and efficiency/weatherization programs.

If structured similarly to LIHEAP, a WRAP initiative would be funded in the range of \$1.5 billion a year to \$5.1 billion a year (the range of LIHEAP's household energy cost assistance experience). At \$4 billion WRAP would cover 43% of the average cost of water and wastewater for all low-income households across America, although that percentage would vary considerably from state to state.



It is worth noting that Congressional funding for LIHEAP has substantially declined in recent years, falling from \$5.1 billion in FY2010 to \$3.4 billion in FY2016. Even at the higher level of funding, which assisted 8.9 million households, the money was only sufficient to serve 1 in 5 eligible Americans.

Key Features of LIHEAP:

1. States administer the program in accordance with individual state plans which must be federally approved. In administering benefits, states decide the mix and dollar range of benefits, choose how benefits are provided (e.g. either to utilities or directly to households) and decide which state agencies will administer the program.
2. Funds are allocated to states by a formula that factor in energy costs, typical weather, and the number of households in need.
3. States use the funds in several ways:

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- a. States help eligible households generally to meet heating and cooling costs;
 - b. States are also required to reserve funds to assist when households face an energy crisis (states determine the circumstances under which they will provide assistance, such as when a household is in danger of losing their heating or cooling due to problems with equipment or exhaustion of a fuel supply);
 - c. Funds may be used for low-cost weatherization projects (limited to 15% of their allotment, with waivers from HHS for up to 25%);
 - d. Funds can be used to provide services to reduce the need for energy assistance (e.g. needs assessments and counseling, limited to 5% of the allotment); and
 - e. Funds may be used for program administration, limited to 10% of the allotment.
4. Income guidelines determine household eligibility, and qualifying households receiving assistance can receive it for as long as appropriated funds are available. However, because the overall amount of money is limited, not all eligible households in fact receive funding.
 5. LIHEAP statutes establish 150% of the poverty level as the maximum income level allowed in determining LIHEAP income eligibility, except where 60% of the state median income is higher. State income eligibility criteria for LIHEAP may not be set lower than 100% of the poverty level.
 6. States have points of contacts, called community action agencies, to which potential recipients apply for funding. Applicants must provide certain documentation to qualify for benefits, including recent copies of utility bills, payroll stubs and other income documentation, and proof of residency and citizenship.
 - a. The LIHEAP statute does not impose an asset test in establishing eligibility, but states may choose to limit eligibility based on client assets.
 - b. Statute requires that states conduct outreach to eligible households, especially those with elderly individuals or individuals with disabilities.
 - c. States must also ensure that households with the lowest incomes, together with the highest home energy need in relation to income, receive the highest level of assistance.
 - d. LIHEAP acknowledges that renters, for whom energy payments may be included in their rent, differ from homeowners in this respect and requires that renters and homeowners be treated equitably.

Benefits and Limitations of LIHEAP as a Model

- *Impact* — An adequately funded WRAP based on LIHEAP would remove a serious impediment to utilities making water infrastructure investments that are both substantial and based on true cost-of-service rate making. Additional analysis will be necessary, however, to determine what specific federal guidelines should be included in any WRAP legislative to ensure this outcome.

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- *Administration* — LIHEAP is a successful program with a rationale and structure that could be logically adapted for the water sector. Energy utility bills for low-income households are similar in size to their water utility bills, and help for the latter is as reasonable as help for the former. LIHEAP has operated for decades with a tested administrative system. WRAP eligibility for recipients could mirror those for LIHEAP, and either EPA or HHS could administer it. However, some issues such as the design of the state distribution formula could not be adapted as easily and would still require additional work.
- *Budget* — The authority for WRAP could be created through the legislative process as a free-standing bill or as an amendment to laws on related subjects such as those for the SRFs. Because legislation would take the form of an authorization for an appropriation, meaning the actual level of funding would be determined through the annual appropriations process, no offsetting budget cuts or new sources of revenue would be required for enactment of the authorizing legislation. Of course, relying on annual Congressional appropriations would introduce a measure of uncertainty into the process from one year to the next.
- *Politics* — The administration's proposals on infrastructure and increased SRF spending provide an obvious point of entry for a WRAP plan to be made part of the administration's infrastructure policy review process.

III. SUMMARY OF KEY CONCLUSIONS AND RECOMMENDATIONS

The following is a list of key recommendations and conclusions based on the analysis contained in this review. The key conclusions are a combination of recommended actions to be taken and suggested next steps where additional work may be needed.

- (1) The idea of a federal program designed to help low-income ratepayers pay their water bills makes sense as a way of facilitating state and local investment in the water sector, thereby reducing the nation's clean water needs while creating jobs through economic activity.
- (2) The best model to use for the design of a water ratepayer assistance program (WRAP) would be the Low Income Home Energy Assistance Program known as LIHEAP. LIHEAP is a federal program that provides financial assistance to low-income households to help them pay their energy bills, such as electric and gas utilities and home heating oil. Home energy bills are similar in size to home water and sewer charges, and for most people both are housing necessities.
- (3) Instead of Health and Human Services, it is recommended that the administering agency for WRAP be the Environmental Protection Agency, and that WRAP be drafted as a free-standing measure that can be converted into an amendment to the existing EPA State Revolving Fund authorities. This approach keeps the measure within the jurisdiction of experts knowledgeable about the challenges of the water sector and would encourage an integrated approach to planning around a wider set of existing federal financial resources for water infrastructure.
- (4) Much of the existing LIHEAP statute could be directly adapted into a form suitable for a WRAP bill. However, because of differences between the water sector and the energy sector, there are a few outstanding issues that would require additional research or policy decisions to appropriately fill in those blanks. Although there are numerous smaller issues, the major six questions are:
 - a. Will the bill cover both wastewater and drinking water?
 - b. What federal guidelines specific to the water sector need to be included in the requirement for state plans to ensure that proper ratemaking and infrastructure investment will occur as a result of the low-income ratepayer assistance?
 - c. How will the distribution formula to allocate money among the states and other recipients be designed?
 - d. How will renters and multi-unit dwellings be dealt with effectively and equitably?
 - e. Should water efficiency measures and home repairs be encouraged as an option for states to offer low-income households?
 - f. Should incentives be included that encourage leveraging of funds from non-federal sources to provide additional assistance to low-income ratepayers?
- (5) The prospects for the enactment of WRAP legislation should be rated as plausible but difficult. Presently in Washington, the general outlook for funding for both low-income and

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environmental programs is negative. However, WRAP is in a special situation because President Trump has identified both increased infrastructure spending, including water projects, and expanded SRF money as priorities. This provides an opportunity to insert the concept of a WRAP proposal into the national debate and budget negotiations on Capitol Hill.

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Appendix 1

OUTLINE OF DRAFT WRAP LEGISLATION

Bold Language indicates more review necessary of policy issues

Italics indicate water efficiency provisions

Brackets [] indicate Win With Green annotation

Sec. 1. Title

The Water Ratepayer Assistance Program of 2017

Sec. 2. Grants

- (a) Authorization for Administrator to make grants
- (b) **Authorization for Appropriations** [amounts TBD]
- (c) Appropriations obligated in succeeding fiscal year
- (d) **Authorization for leveraging incentive program** [Are leveraging incentives desired?]
- (e) Authorization for appropriation for natural disaster or other emergency

Sec. 3. **Definitions** [Main question is whether both wastewater and drinking water are included]

- (1) Emergency
- (2) **Water Burden**
- (3) **Water Crisis**
- (4) Highest Home Water Needs
- (5) Household
- (6) **Home Water**
- (7) Natural Disaster
- (8) Poverty Level
- (9) Administrator
- (10) State
- (11) State Median Income

Sec. 4. **State Allotments**

[Much of the language in this section of LIHEAP can be transferred to WRAP but this is also the section that determines the allocation formula so more thought needs to be given to how to structure that.]

Sec. 5. Applications and Requirements

- (a) State application to receive funds
- (b) State certification
 - (1) Uses of funds
 - (A) Outreach activities

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(B) Intervention in water crises

(C) ***Water efficiency and other home repairs***

(D) Plan, develop and administer the program

(2) Make payments only for

(A) Households receiving assistance from certain other programs or

(B) Meeting certain income limits

(3) Outreach activities for eligible households

(4) Coordination with similar Federal and State programs

(5) Providing the greatest assistance to households with the greatest need

(6) Designating local administrative agency

(7) Procedures for making payments directly to water suppliers

(8) Provide assurances

(A) That income eligible households will not be excluded and

(B) **That owners and renters are treated equitably**

(9) Provide that not more than 10% of funds are used for planning and administration except from non-Federal sources

10) Fiscal control and fund accounting procedures

(11) Allow and cooperate with Federal investigations

(12) Public participation in plan development

(13) Administrative hearings for denied claims

(14) Data collecting and reporting

(15) **Crisis situations** [LIHEAP language requires clarification as to what is a water crisis]

(16) *Up to 5% of funds for household water efficiency*

(17) Miscellaneous Provisions — State flexibility. Prevention of fraud, waste and abuse. Administrator to provide model performance goals and measures.

(c) State Plans

(1) **State plan provided as part of application.** [Much of the LIHEAP language can be incorporated into a WRAP bill, but water-sector specific language still needs to be developed]

(2) Plans made publicly available

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(3) Model state plan format to be provided

(d) Funds spent in accordance with plan

(e) Financial and compliance audits

(f) Treatment of assistance

(1) Assistance not considered income for State or Federal purposes

(2) Determining excess shelter expense deduction

(g) State must repay funds not spent in accordance with this title

(h) Comptroller General evaluation of State grant expenditures

(i) Additional household eligibility specifications

(j) The relationship to other Federal statutes of State procedures for verifying income

(k) ***Up to 15% of funds for water efficiency/home repair or 25% of funds if waiver is provided***

(l) **Funds may be used for State tax credits for water suppliers who provide rate discounts**

Sec. 6. Nondiscrimination Provisions

(a) No discrimination on basis of race, color, national origin, sex, age or handicap.

(b) In case of noncompliance the Administrator should notify the State and refer the matter to the Attorney General for possible civil action

(c) Civil action may be brought in any appropriate U.S. district court

Sec. 7. Payments to States

(a) Provides process for obligating an allotment in a subsequent fiscal year

(b) **Incentive program for leveraging non-Federal resources**

(c) ***Water Assistance Challenge Option*** [This is another innovative efficiency program that could serve as a model for the water sector]

Sec. 8. Withholding

(a) Administrator may withhold funds if State does not comply with this title.

(b) Administrator may investigate uses of funds

Sec. 9. Limitations on the Use of Grants

(a) Grants may not be used to improve land or to purchase, construct or improve any facility

(b) Up to \$300,000 may be reserved by the Administrator to provide training and technical assistance and to conduct onsite reviews of programs

Sec. 10 Studies

(a) **The Administrator shall provide for the collection of data** [what type for water sector needs to be specified]

(b) Annual report to Congress

Sec. 11. Repealers and other Statutory Provisions

[A review is needed of whether this new authority requires other statutory authorities to be modified or repealed]

Appendix 2

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

The Supplemental Nutrition Assistance Program (SNAP) is a U.S Department of Agriculture entitlement program designed to help eligible low-income households buy food. SNAP is the contemporary version of a food assistance program first created under the New Deal and was formerly known as the Food Stamp Program. This forerunner of SNAP was substantially overhauled as part of welfare reform in 1996 and renamed SNAP as part of the Food and Nutrition Act of 2008.

SNAP was reauthorized most recently in 2014 in the farm bill (P.L. 113-79), as is the historical practice for food assistance programs. In FY2016 SNAP's budget of nearly \$71 billion provided over 44 million Americans with an average of \$125.51 in food assistance every month.

ADMINISTRATION OF SNAP

The Food and Nutrition Service (FNS), an agency of the USDA, is responsible for administration of federal nutrition programs including SNAP. One of the major changes made to SNAP as part of welfare reform was its conversion into a state block grant program. This gives states considerable leeway in the administration of the program, but they still must meet certain federal guidelines to qualify for support. SNAP is typically administered by the state's social services agency, which in most cases contracts with local providers to offer services. Each state designs its own application process within federal guidelines and specifies documentation requirements regarding residency, citizenship, household status, income and other financial resources.

Generally edible foodstuffs and drinks qualify for purchase, as well as seeds or plants to grow food, but not alcohol, tobacco, or non-food household items. Payments are received through an Electronic Benefit Transfer card that works like a bank debit card. Benefit amounts account for the size of the household, the maximum benefit for the fiscal year, and the household's net income. Benefits are automatically loaded into the household's account each month on the designated date as provided in the SNAP benefit issuance schedule at <http://www.fns.usda.gov/snap/snap-monthly-benefit-issuance-schedule>.

ELIGIBILITY FOR ASSISTANCE

SNAP eligibility and benefits are calculated on a household basis. Typically, a group of people who live together and purchase and prepare meals together is considered a household, although spouses and most children under age 22 are included in the same household even if they purchase and prepare meals separately. People are not usually eligible for SNAP benefits if an institution gives them their meals, although there are exceptions for elderly or disabled persons.

Financial eligibility is determined through a categorical or a traditional eligibility path. Under *categorical eligibility* an automatic determination of eligibility is made if applicant participates in other means-tested programs such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF) or General Assistance (GA).

Under federal rules for *traditional eligibility*, applicant households must meet a three-fold financial test (although states have some flexibility to adjust):

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- Household gross monthly income must be at or below 130% of the poverty level;
- Household net monthly income must at or below the poverty level; and
- Asset limits are set at \$2250 per household (or \$3250 if it contains an elderly or disabled member).

Certain resources are not counted towards these asset limits such as most pensions plans, a house and lot, or in many cases a car. In addition, the resources of people who receive assistance under SSI or TANF are not counted at all. (An important exception is in California where SSI recipients are not eligible for SNAP benefits because they receive a State supplement to their SSI benefits in lieu of SNAP benefits.) Eligibility is limited to five years and requires employment seeking efforts on the part of many of the recipients.

OTHER ISSUES OF NOTE

- **The 2014 Farm Bill changed treatment of LIHEAP in the calculation of SNAP benefits.** The 2014 Farm Bill (P.L. 113-79) requires a minimum payment of LIHEAP before such assistance can impact the calculation of a household's excess shelter deduction.
- **SNAP makes grant accommodations to conduct research/studies on how to improve their program to continue to increase the number of low-income individuals who receive assistance.**
<https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap>
- **Food Stamp drug testing is currently impermissible as a result of restrictions written in federal law, but this could change.** Wisconsin Governor Scott Walker called on then President-Elect Trump to make changes to allow for drug testing to ensure individuals receiving government benefits and seeking employment are not abusing drugs.
<http://www.wisconsinrapidtribune.com/story/news/politics/2017/01/11/official-food-stamp-drug-tests-would-violate-federal-law/96438832/>

Appendix 3

FEDERALLY ASSISTED WATER INFRASTRUCTURE BONDS (LIWIBs)

Another tool for helping water utilities meet the needs of low-income individuals and communities could be capitalization bonds that are given special federal financial incentives. Such low-income water infrastructure bonds (LIWIBs) could be complementary to grants from a low-income household water assistance program (LIHWAP) by lowering the cost of borrowing to utilities when they make investments that provide services to low-income customers.

LIWIBs could take several forms. However, they all share the trait of being paired with a federal incentive payment, either to the issuer or the purchaser. This payment improves the appeal of the bond to investors by allowing the utility to offer the investment at a more attractive effective rate of return but at a lower cost to itself. The savings in the cost of borrowing to the utility allows it to make capital improvements with a smaller impact on rates.

Other than tax-exempt bonds, there are primarily two types of federally assisted municipal bonds: (1) tax credit bonds where the tax credit is paid directly to the purchaser; and (2) direct pay bonds where a subsidy is paid instead to the issuer. Both types of bonds were included in the stimulus bill passed in the first year of the Obama administration and were known as Build America Bonds (BABs). A proposal for LIWIBs could be modeled after BABs while being improved in key respects. In addition President Trump has committed to a major, \$1 trillion infrastructure tax credit plan, and, although the details are still forthcoming, it could offer a vehicle for some type of LIWIB.

Obama administration BABs were available for nearly two year from April 2009 until the end of 2010. The Treasury Department estimates that over \$180 billion of bonds were issued over the lifetime of the program with costs savings to state and local governments of about \$20 billion (in present value). Other federally assisted bonds for different purposes have been proposed in the past. For example, Better America Bonds to promote smart growth were included in the Clinton Administration's FY 2001 budget, although they were not enacted into law.

ADMINISTRATION OF LIWIBs

Like BABs, LIWIBs would be administered through the Department of Treasury. For **tax credit bonds**, the payment would be made through the tax code to the purchaser and would not be subject to the annual budget process. In theory the bond could either be interest-bearing or interest-free, as long as the size of the tax credit was large enough to make it appealing to investors. BABs were taxable, interest-bearing bonds with a 35 percent tax credit for the purchaser. By contrast, Clinton's Better American Bonds were interest-free with the federal government providing a tax credit against the investor's other tax liabilities. In effect Better America Bonds would have allowed states and localities to borrow for free, while the return to the investor was paid by the federal government.

With **direct payment bonds**, the Treasury payment could also be tied to the taxable interest paid on the bond, but in this case the issuer would receive the payment directly. This subsidy would lower the costs of borrowing to the bonding authority, who could offer a rate that was both affordable and competitive even though the bonds were not tax-exempt. (Direct pay BABs provided a payment equal to 35 percent of the interest that was paid on the bond.) Unfortunately, direct pay bonds can be subject to the annual appropriations process, and direct pay BABs fell victim to budget sequestration cuts starting in 2013.

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Options for a direct pay LIWIB should consider whether the payments could be authorized as a mandatory payment like Treasury bonds to avoid the uncertainty of appropriations.

The Congressional committees of authorizing jurisdiction are the Ways and Means Committee in the House and the Finance Committee in the Senate. In addition any major plan to create federally assisted bonds or other tax credits (including the Trump infrastructure proposal) would most likely have to go first through the Budget Committee and be included in a Budget Resolution and a subsequent Budget Reconciliation package. Within the executive branch, tax policy measures are usually led by Treasury with a supporting role for the Office of Management and Budget.

ELIGIBILITY FOR ASSISTANCE

Unlike assistance programs that make payments directly to the needy, the recipients of the payments under LIWIBs would be the investor or the utility. Nevertheless, the customer or ratepayer would still stand to gain financially if the savings in borrowing expenses to the utility results in lower costs to go into the rate base than would have resulted without the program.

Under BABs state and local governments could issue such bonds for any of the purposes for which they could issue a tax-exempt bond. However, LIWIBs would have to be more narrowly targeted to ensure that the federal assistance was promoting investments that would aid the individuals in greatest need. One way to do this might be to adapt criteria similar to those for Recovery Zone Economic Development bonds, also included in the stimulus act, which listed among its qualifying communities those with significant poverty, unemployment, high rate of home foreclosures, or general distress.

BENEFITS OF LIWIBS

LIWIBs would not be meant to take the place of authorizing new grant programs or entitlement payments that would go to needy customers to help them pay for the cost of water services. Instead they would be intended as a complementary policy to advance the same result. One consideration is that no new federal grant program may be large enough by itself to cover all the expenses necessary to provide water services to needy communities and some borrowing may still be required. If so, LIWIBs could offer some benefits compared to traditional tax-exempt state and local bonds.

First, the appeal of tax-exempt bonds is greatest for those classes of investors who have tax liabilities, limiting their reach. By contrast tax credit bonds would also appeal to those classes of investors with low or deferred tax liabilities, since they would both earn interest and get a federal tax credit payment whether or not they owe taxes. This expanded class brings in institutional investors, such as pension funds, greatly enlarging potential demand for the bonds and further lowering borrowing costs. Treasury estimates that the traditional tax-exempt bond market at about \$2.8 trillion, whereas the conventional taxable bond market is a much bigger \$30 trillion.

Second, because LIWIBs would not need to go to the tax-exempt market, it would take pressure off that market where other water infrastructure bonds would still need to go. This could result in additional savings in the cost of borrowing for water service ratepayers, although the benefits would be indirect.

Finally, trying to get LIWIBs into the administration's infrastructure tax credit plan could offer the best possibility in the near-term for any action on the issue. Even if LIWIBs were not included in the final plan, proposing it could get the conversation going on the need for federal assistance for this purpose.

Message

From: Matt Ellsworth [ellsworth@miningamerica.org]
Sent: 9/28/2017 9:41:01 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
CC: Laura Skaer [lskaer@miningamerica.org]; Adam Hawkins (ahawkins@globalexternal.com) [ahawkins@globalexternal.com]
Subject: Oct 6 AZ Event

Byron, thanks for taking the time to have Laura over on Monday, sorry to have missed you last time. As time is of the essence, I wanted to extend this request ASAP and you and Laura can follow up.

On Oct 6 Administrator Pruitt will be in Arizona holding a business roundtable. As you are aware, AEMA has a large presence of members in Arizona and would appreciate the opportunity to bring the AEMA membership voice to the table. Would it be possible to include the AEMA Board Vice President Adam Hawkins in that event? Adam is local to Phoenix and represents many local business along with AEMA. I believe he would provide high value.

Your consideration is very much appreciated! Adam is cc's on this email or his phone is

Ex. 6



Matthew Ellsworth
Government Affairs Manager
American Exploration & Mining Association

Office: 509-624-1158, **Ex. 6**
www.MiningAmerica.org

Message

From: Tomiak, Robert [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E43D67FE354A4D06BE80AFA6EB65E614-TOMIAK, ROB]
Sent: 11/2/2017 4:04:48 PM
To: Shaw, Nena [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ae00b27ec1544ef8331567ce532bdd3-Shaw, Nena]; Darwin, Henry [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ae8e9d24eeb4132b25982e358efbd9d-Darwin, Hen]; Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]; Tejada, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6559971c9dcd4c689ca6ec6b2a8cb0ee-Tejada, Matthew]; Letendre, Daisy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b691cccca6264ae09df7054c7f1019cb-Letendre, D]; kevin.butt@toyota.com; jamie.bonini@toyota.com
CC: Matt.fountain@osec.usda.gov; Fountain, Matt - RD, Washington, DC [Matthew.Fountain@osec.usda.gov]; Adcock, Rebeckah - OSEC, Washington, DC [Rebeckah.Adcock@osec.usda.gov]
Subject: RE: Toyota Follow Up
Attachments: NEPA EIS Data.pdf; EIS distribution by federal agency.pptx

Wanted to share some data from the Council on Environmental Quality (CEQ). The first attachment reflects the cycle time distribution by 3 major milestone categories and overall cycle time distribution by frequency. The second attachment reflects EIS volume by agency over about a 12 year period. The second attachment seems to at a glance indicate that roughly 300 EISs across the entire federal government per year might be in the ball park; although I don't know if there is a trend reflecting a decline or increase.

I have reached out to CEQ and asked for the data behind their numbers which would be useful to the analytics we discussed yesterday (such as life cycle sorted by project type).

Thanks, Rob

Rob Tomiak
Director, Office of Federal Activities
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

From: Shaw, Nena
Sent: Wednesday, November 01, 2017 5:04 PM
To: Darwin, Henry <darwin.henry@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Tomiak, Robert <tomiak.robert@epa.gov>; Tejada, Matthew <Tejada.Matthew@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>; kevin.butt@toyota.com; jamie.bonini@toyota.com
Cc: Matt.fountain@osec.usda.gov; Fountain, Matt - RD, Washington, DC <Matthew.Fountain@osec.usda.gov>; Adcock, Rebeckah - OSEC, Washington, DC <Rebeckah.Adcock@osec.usda.gov>
Subject: RE: Toyota Follow Up

All –

First of all, thank you for your time this afternoon to begin talking through how we will work to streamline the NEPA environmental review process across the government. As I mentioned, I think this is an incredible opportunity. We are thrilled that Toyota is interested in working with us to achieve the President's goal of reaching a 2 year cycle time for the overall process, if not exceeding that goal.

Jamie mentioned the video TSSC made of their work with the State of New York on a permitting process and I have provided a link below.

<http://www.tssc.com/gov-nys-vid.asp>

I have also attached the Association of General Contractors comments on the NEPA process, which includes a version of the NEPA process chart. In addition, I am adding what I think is a high resolution version. Again, we do not endorse all of these comments or suggestions, but they are reflective of customer concerns and want to share them to inform this project.

In addition, I am going to write a note on next steps to ensure that we are all on the same page. Watch for that early next week.

Thanks again.

Best, Nena

-----Original Appointment-----

From: Darwin, Henry

Sent: Monday, October 16, 2017 11:03 AM

To: Darwin, Henry; Brown, Byron; Tomiak, Robert; Tejada, Matthew; Letendre, Daisy; Shaw, Nena;

kevin.butt@toyota.com; jamie.bonini@toyota.com

Cc: Matt.fountain@osec.usda.gov; Fountain, Matt - RD, Washington, DC; Adcock, Rebeckah - OSEC, Washington, DC

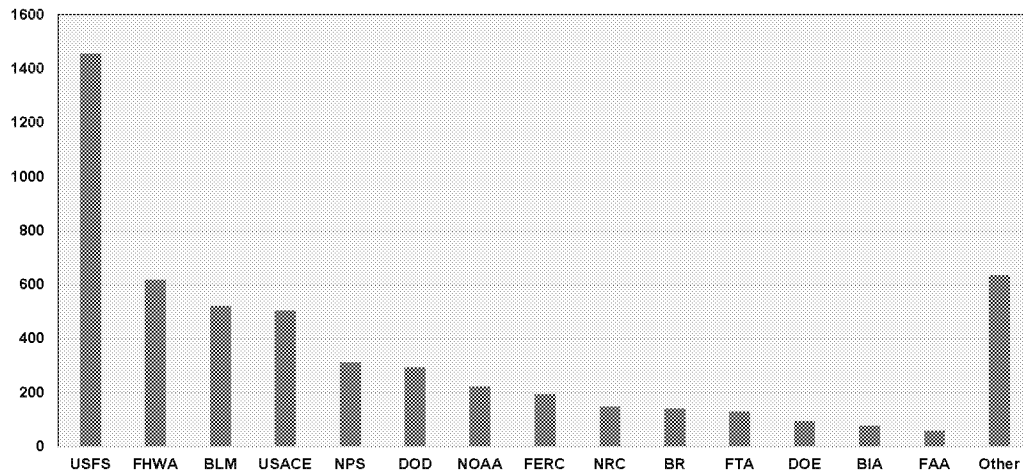
Subject: Toyota Follow Up

When: Wednesday, November 01, 2017 1:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).

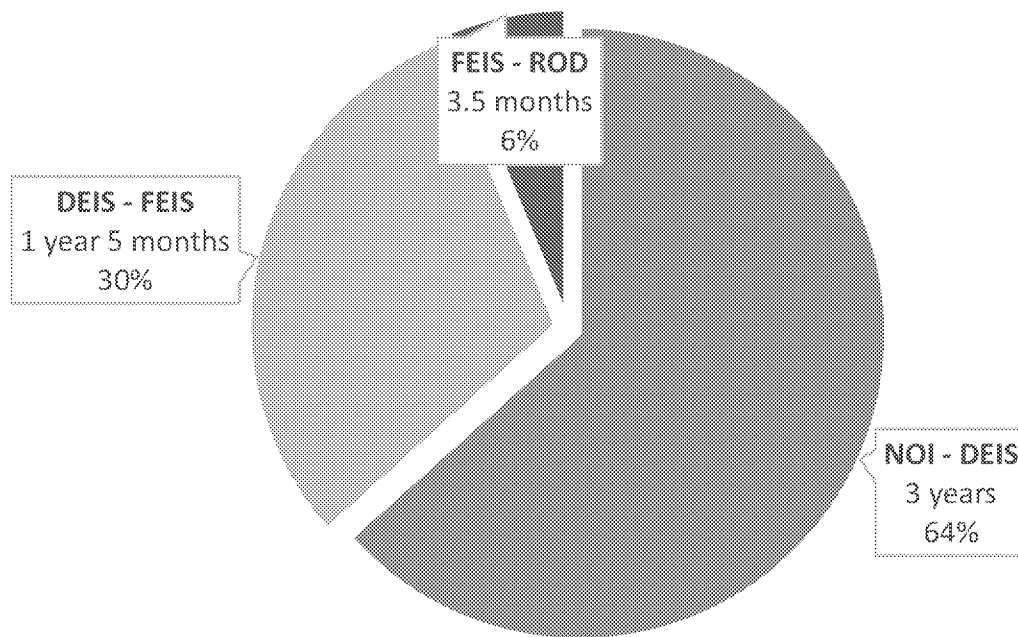
Where: 3402 WJC-N

EIS Filing: EISs Filed by Agency (2005 – 2016)

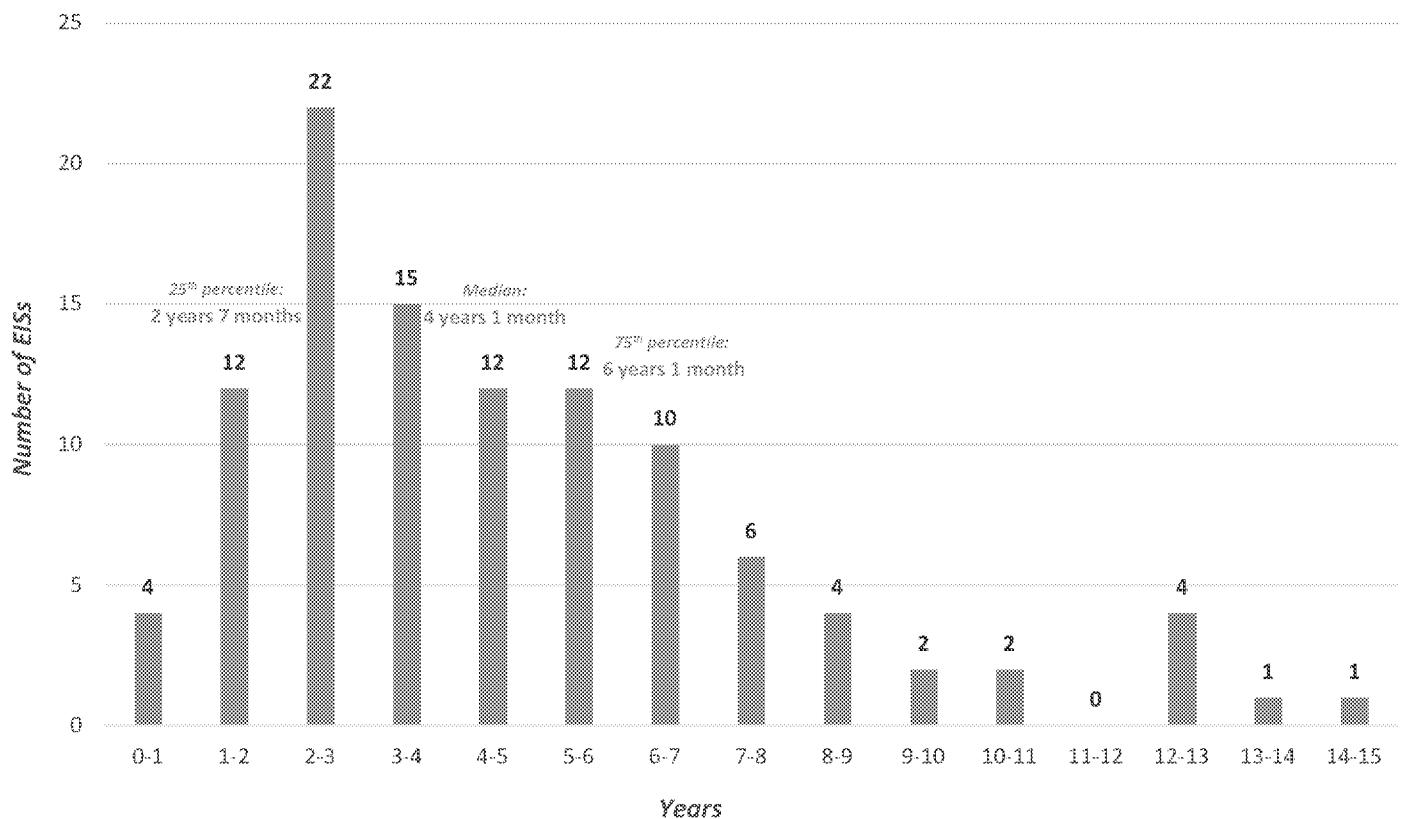
EIS Breakdown by Agency



Breakdown of mean completion time of NEPA Process for Final EISs published in 2016 with a signed ROD
(n=107)



Completion time (NOI-ROD, in years) for Final EISs published in 2016 with a ROD
(n=107)



Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 9/22/2017 8:28:55 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Re: Meeting with Laura Skaer

I can do either. Shall we try 10 am?

Laura Skaer
Sent from my iPhone

On Sep 22, 2017, at 3:27 PM, Brown, Byron <brown.byron@epa.gov> wrote:

Let's try the morning of Oct. 2. I should be free either 10 am or 11 am.

From: Laura Skaer [<mailto:lskaer@miningamerica.org>]
Sent: Thursday, September 21, 2017 5:13 PM
To: Brown, Byron <brown.byron@epa.gov>
Subject: Meeting with Laura Skaer

Hi Byron,

I'm going to be in DC October 2-4 and would like to meet with you and possibly Patrick Davis on CERCLA 108(b). I am available anytime on Monday October 2; any time after 12 noon on Wednesday Oct 4; and any time before 2:15 on Thursday October 5. I'm not available on Tuesday October 3 unless that is the only time you can meet.

Thank you!

Best,

Laura Skaer
Executive Director
American Exploration & Mining Association
10 N Post St Ste 305
Spokane WA 99201
(509)-624-1158 Ex. 6
lskaer@miningamerica.org
www.miningamerica.org
www.themoreyoudig.com
@MiningAmerica
@TheMOreYouDig

MINING – America's Infrastructure Starts Here

<image001.png>

Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 9/22/2017 8:27:20 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Automatic reply: Meeting with Laura Skaer

I am out of the office until Monday, September 25. If this is a media inquiry, contact Devon Coquillard, dcoquilaard@miningamerica.org. For government affairs, contact Matt Ellsworth, ellsworth@miningamerica.org. For all other assistance, email Deanna Stroh at dstroh@miningamerica.org. I will respond as time permits.

Message

From: Greenwalt, Sarah [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6C13775B8F424E90802669B87B135024-GREENWALT,]
Sent: 4/14/2017 8:22:20 PM
To: Chris Hornback [CHornback@nacwa.org]
CC: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]; Washington, Valerie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d031c02ce3a416dad0d421ee998d5a3-VWASHING]
Subject: Re: Meeting

Sounds good. Valerie Washington will escort you up, so just give security her name. You'll come to the entrance on 12th Street, North of the metro stop. Valerie can fill in any other details.

Thanks!

Sent from my iPhone

On Apr 14, 2017, at 4:16 PM, Chris Hornback <CHornback@nacwa.org> wrote:

Thanks. Will touch base next week to get details on who to contact for an escort, etc.

From: Greenwalt, Sarah [<mailto:greenwalt.sarah@epa.gov>]
Sent: Friday, April 14, 2017 4:12 PM
To: Chris Hornback <CHornback@nacwa.org>
Cc: Brown, Byron <brown.byron@epa.gov>
Subject: Re: Meeting

Sorry Chris, my scheduler has been out.



I've got you down for Thursday, April 20th at 10am. Looking forward to seeing you.

Sent from my iPhone

On Apr 14, 2017, at 4:09 PM, Chris Hornback <CHornback@nacwa.org> wrote:

Sarah – We are holding 10am on the 20th. Please confirm when you can.

Thanks.

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)
(O)  Ex. 6 (M)  Ex. 6 chornback@nacwa.org

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From: Greenwalt, Sarah [mailto:greenwalt.sarah@epa.gov]
Sent: Wednesday, April 12, 2017 4:34 PM
To: Chris Hornback <CHornback@nacwa.org>
Cc: Brown, Byron <brown.byron@epa.gov>
Subject: RE: Meeting

Chris,

Thank you for your patience. We've been trying to coordinate schedules over here. Are your folks still available to meet next Thursday, April 20th at either 10 or 11am? Also, I just want to note for you that the Administrator will be out of the office next week and so you will be meeting with myself and Byron, who is our Deputy Chief of Staff for Policy.

Sarah A. Greenwalt
Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency
Work: 202-564-1722 | Cell: Ex. 6
Greenwalt.Sarah@epa.gov

From: Chris Hornback [mailto:CHornback@nacwa.org]
Sent: Tuesday, April 4, 2017 10:11 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: RE: Meeting

Thanks Sarah. We'd like to get this nailed down as soon as possible so our members can make their travel arrangements. Several of our key staff are out of the office next week, so if we can confirm this week that would be great.

-Chris

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)
(O) Ex. 6 | (M) Ex. 6 | chornback@nacwa.org

From: Greenwalt, Sarah [mailto:greenwalt.sarah@epa.gov]
Sent: Monday, April 3, 2017 9:13 AM
To: Chris Hornback <CHornback@nacwa.org>
Subject: RE: Meeting

I think those dates will work nicely. My assistant will schedule something concrete and confirm.

Thanks!

Sarah A. Greenwalt
Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722 | Cell: **Ex. 6**

Greenwalt.Sarah@epa.gov

From: Chris Hornback [<mailto:CHornback@nacwa.org>]

Sent: Tuesday, March 28, 2017 2:11 PM

To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Cc: Hupp, Sydney <hupp.sydney@epa.gov>; Brown, Byron <brown.byron@epa.gov>;

Washington, Valerie <Washington.Valerie@epa.gov>

Subject: RE: Meeting

Sarah –

Thank you for getting back to us. We plan to bring a couple of our key leaders into town to meet with the Administrator, so mid-April would be the earliest we could make work. Here are some potential days/times. We would request an hour for the meeting.

April 18 – 9am, 10 am, 12pm or 1pm

April 19 – Anytime

April 20 – 9, 10, 11, 12, 1 or 2

April 21 – Anytime

Let me know if any of these times might work.

-Chris

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)

(O) **Ex. 6** (M) **Ex. 6** | chornback@nacwa.org

From: Greenwalt, Sarah [<mailto:greenwalt.sarah@epa.gov>]

Sent: Tuesday, March 28, 2017 10:31 AM

To: Chris Hornback <CHornback@nacwa.org>

Cc: Hupp, Sydney <hupp.sydney@epa.gov>; Brown, Byron <brown.byron@epa.gov>;

Washington, Valerie <Washington.Valerie@epa.gov>

Subject: Meeting

Mr. Hornback,

Thank you for reaching out. We would be delighted to get something on the calendar. Do you have a date in mind?

Best,

Sarah A. Greenwalt

Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722 | Cell: **Ex. 6**

Greenwalt.Sarah@epa.gov

Message

From: Shaw, Nena [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2AE00B27EC1544EF8331567CE532BDD3-SHAW, NENA]
Sent: 11/1/2017 9:03:48 PM
To: Darwin, Henry [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ae8e9d24eeb4132b25982e358efbd9d-Darwin, Hen]; Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]; Tomiak, Robert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e43d67fe354a4d06be80afa6eb65e614-Tomiak, Rob]; Tejada, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6559971c9dcd4c689ca6ec6b2a8cb0ee-Tejada, Matthew]; Letendre, Daisy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b691cccca6264ae09df7054c7f1019cb-Letendre, D]; kevin.butt@toyota.com; jamie.bonini@toyota.com
CC: Matt.fountain@osec.usda.gov; Fountain, Matt - RD, Washington, DC [Matthew.Fountain@osec.usda.gov]; Adcock, Rebeckah - OSEC, Washington, DC [Rebeckah.Adcock@osec.usda.gov]
Subject: RE: Toyota Follow Up
Attachments: USACE Reg Reform - AGC.PDF; Environmental Permitting FlowChart 06-14-2017.jpg

All –

First of all, thank you for your time this afternoon to begin talking through how we will work to streamline the NEPA environmental review process across the government. As I mentioned, I think this is an incredible opportunity. We are thrilled that Toyota is interested in working with us to achieve the President's goal of reaching a 2 year cycle time for the overall process, if not exceeding that goal.

Jamie mentioned the video TSSC made of their work with the State of New York on a permitting process and I have provided a link below.

<http://www.tssc.com/gov-nys-vid.asp>

I have also attached the Association of General Contractors comments on the NEPA process, which includes a version of the NEPA process chart. In addition, I am adding what I think is a high resolution version. Again, we do not endorse all of these comments or suggestions, but they are reflective of customer concerns and want to share them to inform this project.

In addition, I am going to write a note on next steps to ensure that we are all on the same page. Watch for that early next week.

Thanks again.

Best, Nena

-----Original Appointment-----

From: Darwin, Henry
Sent: Monday, October 16, 2017 11:03 AM
To: Darwin, Henry; Brown, Byron; Tomiak, Robert; Tejada, Matthew; Letendre, Daisy; Shaw, Nena; kevin.butt@toyota.com; jamie.bonini@toyota.com
Cc: Matt.fountain@osec.usda.gov; Fountain, Matt - RD, Washington, DC; Adcock, Rebeckah - OSEC, Washington, DC
Subject: Toyota Follow Up
When: Wednesday, November 01, 2017 1:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 3402 WJC-N

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DOCKET ID No. COE-2017-0004

Associated General Contractors of America's
Comments Regarding the
U.S. Army Corps of Engineers'
Evaluation of Existing Regulations
(82 Fed. Reg. 33470; July 20, 2017)
in Accordance with Executive Order 13777
("Enforcing the Regulatory Reform Agenda")

Attention:

U.S. Army Corps of Engineers
Attn: CECW-CO-N (Ms. Mary Coulombe)
441 G Street, NW
Washington, DC 20314-1000

Submitted by:

The Associated General Contractors of America
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Ex. 6

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Date: October 18, 2017

INTRODUCTION

AGC is the leading association for the construction industry, representing both union and non-union prime and subcontractor/specialty construction companies. AGC represents more than 26,000 firms including over 6,500 of America's leading general contractors and more than 9,000 specialty-contracting firms. More than 10,500 service providers and suppliers are also associated with AGC, all through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, site preparation/utilities installation for housing development, and more.

AGC has a unique knowledge of USACE regulations concerning construction and procurement. Based on that experience and this request, AGC puts forth the following comments for your consideration.

PART 1 - RECOMMENDATIONS TO IMPROVE ENVIRONMENTAL REVIEW AND PERMITTING FOR INFRASTRUCTURE PROJECTS

- I. Problems During NEPA/Permitting Documentation Preparation and Agency Review: General Comments
- II. Common, or Key, Characteristics of Streamlined Projects
- III. Potential for New Administrative Actions for USACE and Interagency Partners
 - A. NEPA/404 Permit Merger
 - B. "Chokepoints" in CWA Section 404 Individual Permit Process
 - C. Reforms to Ease "Chokepoints" in 404 Program
 - D. Nationwide General Permits: Acreage Limits and Pre-Construction Notification Thresholds
 - E. Clarify and Expand Exemption for Work in Roadside Ditches

PART 2 - RECOMMENDATIONS TO IMPROVE CONTRACTING WITH THE CONSTRUCTION INDUSTRY

- I. Partnering
- II. Improve Processing and Payment of Contract Change Orders
- III. Overseas Military Construction
- IV. Innovative Project Delivery Methods
- V. Safety Officer Accreditations
- VI. Quality Control System

CONCLUSION

APPENDIX A: FEDERAL ENVIRONMENTAL REVIEW AND PERMIT FLOWCHART

PART 1: RECOMMENDATIONS TO IMPROVE ENVIRONMENTAL REVIEW AND PERMITTING FOR INFRASTRUCTURE PROJECTS

AGC members know first-hand how to build infrastructure in a safe, effective and efficient manner. Similarly, they know the many challenges to doing just that. The federal environmental review and permitting process is one such challenge, repeatedly echoed by AGC members across the country; it is a process that is circuitous, costly and time-intensive for many infrastructure projects.

Delays in environmental review and permitting decisions, as well as lengthy procurement processes, often derail the efficient delivery of needed infrastructure projects by many years. Such delays deny the public the substantial benefits that come from a construction project: improving our economy, our competitiveness, and our quality of life.

AGC members strongly maintain that improving environmental approval processes alone, while maintaining the integrity of those processes to mitigate environmental impacts, could allow the public to receive and benefit from infrastructure projects in a timelier fashion. In addition, such improvements could generate project cost savings.

Based on significant input from AGC members, **Section I** below points to significant problems that government agencies face during document preparation and interagency reviews that bog down the National Environmental Policy Act (NEPA) process. In **Section II**, AGC points to the common, or key, characteristics of streamlined projects: those that make it through the environmental approval process in “two years, not ten.”¹ In **Section III**, AGC points out several ripe, high-level opportunities for USACE and its interagency partners to strengthen existing policy and pursue new administrative actions. AGC is principally focused on a requirement to merge the NEPA and Clean Water Act (CWA) Section 404 permit processes, which would greatly expedite project decision-making and avoid duplication and procedural inefficiencies. AGC also provides a detailed “chokepoints” analysis and comprehensive recommendations that are *specific* to the 404 program.

Finally, AGC is an active member of the Washington, DC-based Waters Advocacy Coalition (WAC); that group has submitted detailed comments on existing regulations that should be considered for repeal, replacement, or modification pursuant to the President’s Executive Order 13777.² AGC herein incorporates by reference the points raised in WAC’s letter submitted to this docket.

I. Problems During NEPA/Permitting Document Preparation and Agency Review: General Comments

NEPA³ requires the preparation of an Environmental Impact Statement (EIS) for all major *federal actions* significantly affecting the quality of the human environment. NEPA requires the project proponent and the lead agency to 1) consider the environmental, social and economic impacts of their decisions; 2) evaluate all reasonable alternatives; 3) mitigate impacts to the extent practical; and 4) solicit comments from other agencies, stakeholders and the public.⁴ The Council on Environmental Quality’s (CEQ) regulations implementing the procedural aspects of NEPA are found at 40 C.F.R. Sections 1500–1508.⁵

¹ Executive Order (“EO”) 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects” (Aug. 15, 2017), sets a goal of completing the Environmental Impact Statement (EIS) within two years from the Notice of Intent (NOI) to prepare an EIS.

² 82 *Fed. Reg.* 33470 (Jul. 20, 2017).

³ National Environmental Policy Act (NEPA), 42 U.S.C. § 4321–4347.

⁴ See Federal Highway Administration’s (FHWA) Environmental Review Toolkit online at <https://www.environment.fhwa.dot.gov/projdev/pd3tdm.asp>.

⁵ The CEQ’s regulations also require each agency to adopt implementation procedures to “supplement” its provisions. 40 C.F.R. § 1507.3(a) (2014).

USACE follows CEQ's NEPA regulations; further, the Corps promulgated its own NEPA procedures for the Corps' programs, including the Section 404 permit program.⁶

USACE actions that "normally require an EIS" include: feasibility reports for authorization and construction of major civil works projects; proposed changes in projects which increase size substantially or add additional purposes; and proposed major changes in the operation and/or maintenance of completed projects.⁷ The Corps will normally be the lead agency for Corps' civil works projects and will normally avoid joint lead agency arrangements.⁸ In addition, the issuance of a permit under CWA Section 404⁹ or Section 10 of the Rivers and Harbors Act (RHA)¹⁰ constitutes a federal action subject to the requirements of NEPA, including the preparation of an EIS if the environmental effects of the permit issuance are deemed to be significant.

AGC members have pointed to a host of technical and procedural problems that government agencies face, in general, during document preparation and interagency reviews: they inevitably lead to inconsistencies in the NEPA approval process, schedule delays and costs overruns. Such uncertainty spurs legal challenges, which can ultimately threaten the viability of the project.

Based on AGC members' first-hand experiences, technical and procedural risks typically stem from:

- Poor interagency communication (leads to missed deadlines and conflicting agency requests and responses);
- Inability of the lead agency to make timely decisions, particularly where projects are "political" or controversial;
- Lack of qualified government staff to conduct reviews (leads to delays in document review/publication and resource-agency comments that are conflicting, redundant, repetitive, or inconsistent);
- Confusion during NEPA reviews with joint lead agencies (federal and state) because not all agencies have the same directives/thresholds;
- Disagreement over the project's "Purpose and Need;"
- Insufficient "Alternative Analysis;"
- Ineffective stakeholder outreach and engagement;
- Uncertainty over the level of analytical scrutiny to apply in reviewing projects (agencies are risk averse and often choose not to pursue streamlined options out of concern that such "short-cuts" will increase litigation); and
- Complex overlay of laws and regulations that apply to infrastructure projects – *in addition to NEPA* – complicates the permitting process (*e.g.*, the number of species listed and the breadth of critical habitat identified under the Endangered Species Act grows every year).

⁶ 33 C.F.R. § 230, 53 *Fed. Reg.* 3127 (1988); 33 C.F.R. Appendix B to Part 325 (NEPA Implementation Procedures for the Regulatory Program).

⁷ 33 C.F.R. § 230.6 - Actions normally requiring an EIS.

⁸ 33 C.F.R. § 230.16 - Lead and cooperating agencies. Lead agency status for regulatory actions will be determined on the basis of 40 C.F.R. 1501.5(c).

⁹ 33 U.S.C. Section 1344.

¹⁰ 33 U.S.C. Section 403.

II. Common, or Key, Characteristics of Streamlined Projects

Some infrastructure projects can, and do, get through the NEPA review and permitting process in a timely and effective manner (*i.e.*, “two years, not ten”).¹¹ What makes these projects different? What do these projects have in common that makes them “successful”? In AGC members’ (and their consultants’) experiences, streamlined projects possess the following common, or key, characteristics:

- A **designated leader or champion** within the lead agency who is responsible for **defining and maintaining a schedule** and advancing the process, making key decisions in a timely manner, and clearly outlining the requirements and expectations that the participating resource agencies and project sponsor/applicant need to follow;
- Early and effective **public outreach** and stakeholder engagement (potential project opponents need to be identified, engaged, and educated on the project early and regularly throughout the process);
- Effective and positive **communication between the lead agency and the project sponsor/applicant** regarding the review and permitting;
- A **defined end date** upon which all key parties agree;
- Coordinated and **concurrent NEPA review and regulatory/permitting review processes** (the applicable permit applications should be prepared in conjunction with the NEPA review);
 - Cooperating agencies acceptance, in writing, at the end of the Scoping Phase of the lead agency’s determination of the project’s Purpose and Need, Range of Alternatives to be analyzed, scope of any special studies, and project schedule; and
- Reliance on a **single environmental document** prepared under NEPA to satisfy federal permit requirements and approvals.
- Use **programmatic approaches/agreements** to eliminate repetitive discussions of the same issues.

Under current law, USACE has the authority to carry out many of the above-referenced elements that help to accelerate or “streamline” the delivery of a project. However, there are notable flexibilities, exceptions and qualifications built into nearly every authorized measure that allow the lead agency and participating resource agencies on a project to miss deadlines, defer assessments/analyses, and postpone the bulk of the regulatory/permitting work until after the Record of Decision (ROD).

On Capitol Hill, AGC has presented a compelling case before congressional committees in both the House and Senate for further improving the environmental review and permitting process. Urging Congress to act, AGC also created a chart (see AGC’s Federal Environmental Review and Permitting Flowchart¹² in Appendix A) to illustrate the shortcomings in current laws that seek to streamline approvals for energy, transportation, water, and other “infrastructure projects.” For example, the Moving Ahead for Progress in the 21st Century Act (MAP-21) and Title 41 of the Fixing America’s Surface

¹¹ EO 13807 *supra* note 1. See *e.g.*, FHWA’s “Success in Stewardship” newsletter <https://www.environment.fhwa.dot.gov/strmlng/newsletters/feb16nl.pdf>; “Eight Case Studies Demonstrating Successful Efforts in Environmental Streamlining.” <https://www.environment.fhwa.dot.gov/strmlng/casestudies/index.asp>.

¹² AGC’s flowchart graphically illustrates the dozens of enviro approvals needed before a contractor can break ground on most large infrastructure projects. While the Corps’ regulatory program is just one piece of the puzzle, the Section 404 permit program is often one of the costlier and time consuming environmental processes and an area to look at for streamlining environmental approvals.

Transportation (FAST-41) both contain ambiguities and exceptions allowing lengthier – as well as separate and sequential – reviews and permitting.

In the face of this statutory and regulatory reality, the delays add up; and it's clear that Congress and the federal regulatory agencies can do more.

III. Potential for New Administrative Actions for USACE and Interagency Partners

AGC points to the following opportunities for USACE to take near-term action (through policy guidance or rulemaking) to improve our delivery of important infrastructure projects across the nation. In particular, a mandatory merger of the NEPA and Section 404 permitting processes would greatly expedite project decision-making and avoid duplication and procedural inefficiencies. AGC also provides a detailed “chokepoints” analysis and comprehensive recommendations that are *specific* to the 404 program.

A. NEPA/404 Permit Merger

The current process of performing sequential and often duplicative environmental reviews and permits on the same project – performed by all levels of government following the NEPA approval process – is presenting massive legal hurdles to infrastructure approvals (see AGC’s Federal Environmental Review and Permitting Flowchart in Appendix A). A builder of infrastructure—whether a contractor or government agency—must seek approval not from “the government,” but from a dozen or more different arms of the government. According to bonding companies that finance large public works projects, two environmental approvals are critical in rating a project’s risk for bond financing. Those are the NEPA review (1,679 days, on average, to complete an EIS) and CWA Section 404 permit authorization (788 days, on average, to obtain an individual permit).¹³ Obtaining these approvals prior to bonding greatly reduces risk and achieves a higher bond rating to the benefit of the project sponsor and taxpayers for public projects.

Due to the inability of project owners (*e.g.*, state departments of transportation or private developers) to obtain Section 404 permits quickly following NEPA approval, 404 permitting risk is often transferred to the construction contractor.

REFORMS: For federal transportation projects, several states have merged their NEPA and CWA Section 404 permitting processes; this should be the national standard and USACE’s current regulations already point in this direction but do not go far enough.¹⁴ (Across the nation there is considerable variation in

¹³ The average applicant for an individual permit spends 788 days and \$271,596 to complete the process. (And if the process is beginning with an EIS, it may take six years (or longer) until the environmental reviews are complete.) *Rapanos v. United States*, 547 U.S. 715 (2006).

¹⁴ See 32 C.F.R. § 651.14(e) (2014) (“Several statutes, regulations, and Executive Orders require analyses, consultation, documentation, and coordination, which duplicate various elements and/or analyses required by NEPA and the CEQ regulations; often leading to confusion, duplication of effort, omission, and, ultimately, unnecessary cost and delay. Therefore, Army proponents are encouraged to identify, early in the NEPA process,

the usage and emphasis of merger processes.) In an integrated process, the project sponsor would submit the 404-permit application to USACE simultaneously with the publication of the draft EIS. USACE would be required to issue the 404 permit at the end of the NEPA process based on the information generated by NEPA.

Both the NEPA and Section 404 processes involve the evaluation of alternatives, the assessment of impacts to resources, and the balancing of resource impacts and project need. Conducting two processes simultaneously (or allowing the former to satisfy the latter) would greatly expedite project decision-making and avoid duplication and process inefficiencies.¹⁵ The federal funding agency should assume a lead role in shaping the project “purpose and need” and “range of alternatives” during the NEPA review. To simplify the review process, and reduce the potential for impasses over minor changes, Congress should modify any existing requirements for lead agencies to obtain participating agencies’ “concurrence” in project schedules or the adoption/use of “planning products.”

More generally, and as AGC recommends below, it should be a requirement for all government agencies involved in the issuance of a federal permit for any given project to complete concurrent reviews (in conjunction with the NEPA review process) within established time periods. From the perspective of the permit applicant, a coordinated concurrent review under all major federal and state authorities avoids duplication and delays and helps to avoid potentially conflicting permit conditions or limitations (*e.g.*, differing mitigation requirements). There must be timelines and deadlines for completing the environmental permitting process as well as NEPA review deadlines.

1. Integrating CWA 404 Permitting into the NEPA Process

AGC urges the Corps to adopt nationwide procedures to ensure that its Division and District Offices always serve as a “cooperating agency” in the NEPA review process (if not already serving as the lead agency) for all projects with water or wetlands impacts. Project proponents who must comply with NEPA and CWA Section 404 permitting can integrate the steps involved in complying with the 404 regulations and permit requirements into the NEPA process. USACE should assume the responsibility for ensuring that the monitoring, wetlands delineation, mitigation planning and other environmental consultation work performed during the NEPA review (and included in the final EIS and Record of Decision documents) is sufficient to meet the 404 permit authorization requirements, without the need to re-do processes, unless there is a material change in the project.

While this will require more focus and involvement on the front end, it will streamline the entire process and ultimately reduce costs and get these important projects underway faster.

opportunities for integrating those requirements into proposed Army programs, policies, and projects. Environmental analyses required by this part will be integrated as much as practicable with other environmental reviews, laws, and Executive Orders (40 C.F.R. § 1502.25). Incorporation of these processes must ensure that the individual requirements are met, in addition to those required by NEPA.”).

¹⁵ The “2015 (update) Red Book -- Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects” describes a process that satisfies the NEPA requirements and synchronizes environmental permitting for all agencies involved. It includes examples of successful NEPA/404 merger process agreements whereby the documentation and coordination conducted comply with NEPA and any preferred alternative selected under the joint process comply with CWA § 404(b)(1) guidelines.

Integration While Determining Lead Agency and Other Federal Resource Agencies. The practice of integrating 404 permitting into the NEPA process begins by identifying the NEPA lead agency and the permits required to carry out the project. Next, the lead agency must consider the environmental resource information that can be used to satisfy both processes. Early participation and coordination of resource agencies is needed to define the proposed project in ways to avoid hurdles in permitting later in the process:

- If the proposed project affects a water or wetland, the lead agency should contact USACE to determine what information is required for a USACE permit(s).
- The lead agency (or project proponent) should request species lists from the National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), and the state department of fish and game. This early stage is also a useful time to elicit input from NMFS and USFWS and to request that they participate on an agency review team. Early and continuing participation by these agencies can reduce or eliminate the need to prepare a Fish and Wildlife Coordination Act report.
- A records search should be conducted by a cultural resources specialist to determine whether any known cultural or historic resources exist on or near the project site. This information can be used to avoid impacts on these sites when the proposed project and alternatives are designed.

Integration While Preparing Statement of Purpose/Need and Alternatives. If the proposed project will require a CWA Section 404 permit, it is important to carefully consider the CWA Section 404(b)(1) guidelines (see discussion below) when preparing a statement of project “purpose and need” and “range of alternatives.” At this point in the process, the project proponent can also have the NEPA lead agency contact USFWS to determine whether the preparation of a Fish and Wildlife Coordination Act report will be required for the project.

To the extent possible, alternatives should be developed that avoid adverse impacts on listed species or critical habitat, as well as impacts to cultural resources identified on the project site, and impacts on rivers designated wild and scenic, coastal zones, among other things. If avoidance is not possible, reasonable efforts should be made to design alternatives that reduce/minimize such impacts. (Appropriate conservation measures should be included in the draft EIS to mitigate any impacts.)

Integration When Circulating Draft EIS. If a Section 404 permit application has been prepared, it can be submitted to USACE for review with a request that public review of the application be concurrent with the NEPA review period. Also, for example, if a Determination of Effects report has been prepared under NHPA Section 106, it can be submitted by the NEPA lead agency to the SHPO. If a draft Coastal Zone Management Act Consistency Determination has been prepared, it can be circulated with the EIS.

Successful Merger Examples. Many agencies already have integrated substantive 404 permitting considerations into their NEPA EIS processes. FHWA recently updated its [2015 Red Book: Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects](#) – which describes a process that satisfies the NEPA requirements and synchronizes environmental permitting for all agencies involved. (The Red Book is a collaborative effort among USACE, the U.S. Coast Guard, USEPA, USFWS, the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Department of Transportation (DOT).) It includes examples of successful NEPA/404 merger process agreements that

comply with NEPA and CWA Section 404(b)(1) guidelines – see below. Earlier versions of the Red Book included similar language and state DOTs have looked to it to set up “merger agreements” on single projects or broader programmatic agreements (sometimes in the form of MOUs).¹⁶ Such examples show that proponents can save resources they would otherwise have to expend at the permitting stage by demonstrating during the EIS process, for example, that their project is the “least environmentally damaging practicable alternative.”¹⁷

2. Practical Alternatives Restriction in the 404(b)(1) Guidelines

NEPA requires the identification of a proposed action’s “purpose and need,” which helps to guide the identification of a “reasonable range” of alternatives and the evaluation of how well those alternatives satisfy the project’s underlying goals. The 404(b)(1) guidelines¹⁸ of the CWA require the identification of “overall project purpose,” which also serves as the basis for an analysis of alternatives, known as the “practicable alternatives test.” In the latter case, USACE may not issue a Section 404 permit “if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.”¹⁹ An alternative is “practicable” if it is “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.”²⁰ Where special aquatic sites, including wetlands, will be affected, and the activity is not “water dependent,” “practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise,” and are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise.²¹

REFORMS: Additional guidance or revised regulation is needed to reinstate – and perhaps strengthen – the Corps’ longstanding flexibility in application of USEPA’s 404(b)(1) guidelines. In 1993, recognizing that the impacts from discharges of dredged or fill material vary greatly, the Corps and EPA jointly issued guidance that provides that the Guidelines “do not contemplate that the same intensity of analysis will be required for all types of projects but instead envision a correlation between the scope of the evaluation and the potential extent of adverse impacts on the aquatic environment.”²² If the project’s purpose is defined sufficiently narrowly, the range of alternatives that will achieve that purpose and be considered “practicable” will be narrowed as well. With respect to actions subject to NEPA, the Section 404(b)(1) guidelines specifically state:

¹⁶ Following are some successful NEPA/404 merger programs and project examples: California; Colorado; Kentucky; North Carolina; Southwest Light Rail Transit Project (SWLRT) Project; Tappan Zee Bridge Replacement.

¹⁷ The documentation required to satisfy NEPA’s alternatives analysis will “generally provide the information necessary for evaluating alternatives under CWA guidelines.” John Schutz, *The Steepest Hurdle in Obtaining A Clean Water Act Section 404 Permit: Complying with EPA’s 404(b)(1) Guidelines’ Least Environmentally Damaging Practicable Alternative Requirement*, 24 UCLA J. Env’t’l L. & Pol’y 235,240 n.30 (2006).

¹⁸ The “guidelines” were issued by USEPA through the notice-and-comment rulemaking process, see 45 Fed. Reg. 85336 (Dec. 24, 1980), and are codified at 40 C.F.R. § 230.

¹⁹ 40 C.F.R. § 230.10(a).

²⁰ *Id.* at § 230.10(a)(2).

²¹ *Id.* at § 230.10(a)(3).

²² See U.S. Army Corps of Engineers, RGL 93-02, *Guidance on Flexibility of the 404(b)(1) Guidelines and Mitigation Banking* (Aug. 23, 1993). This RGL remains valid unless superseded by subsequently issued RGLs or regulations.

[W]here the Corps of Engineers is the permitting agency, the analysis of alternatives required for NEPA environmental documents . . . will in most cases provide the information for the evaluation of alternatives under these Guidelines. On occasion, these NEPA documents may address a broader range of alternatives than required to be considered under [the Section 404(b)(1) Guidelines] or may not have considered the alternatives in sufficient detail to respond to the requirements of these Guidelines. In the latter case, it may be necessary to supplement these NEPA documents with this additional information.

40 C.F.R. § 230.10(1)(4).

Additional guidance may also be needed on when an alternative is “practicable” under 40 CFR 230.10(a)(2) and when a practicable alternative has basis for elimination.²³

3. Define Scope of USACE’s NEPA Review

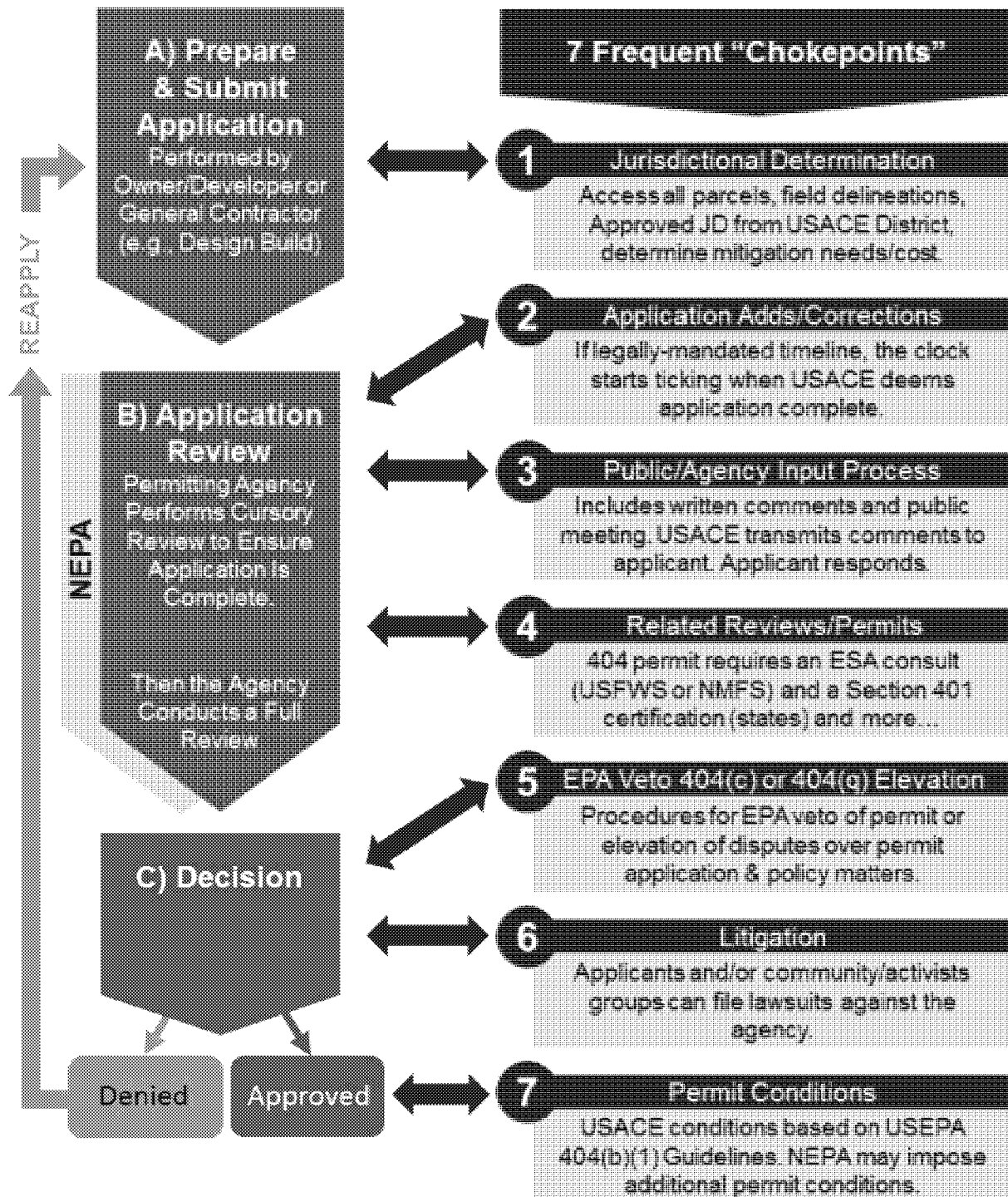
As stated above, the Corps’ NEPA regulations establish the procedures required by the Corps for NEPA review of permit applications. It requires the District Engineer undertaking a NEPA review to establish the scope of the NEPA document to address the impacts of the activity, or those portions of a project that the District Engineer has “sufficient control and responsibility” to require NEPA review.²⁴ To determine the scope, the regulations set forth several factors for the District Engineer to consider, and afford broad discretion to consider additional relevant factors. The scope of review of the Corps’ NEPA analyses has become problematic in two ways. First, individual Districts have abused this discretion and have required NEPA reviews to address irrelevant aspects that are far beyond the scope of the activity authorized by the Corps permit. Second, environmental groups have frequently targeted the Districts’ NEPA decisions in litigation, at times capitalizing on a lack of precision or clarity as to the scope of NEPA analysis (and basis for that analysis) employed by the Corps in the environmental assessment/statement of findings.

REFORMS: To correct this, the Corps should clarify and instruct its Districts to limit the scope of their NEPA review documents to addressing the impacts of the permitted discharge of dredge and fill material. In addition, the Corps should instruct the Districts to provide a specific explanation and justification of the NEPA scope of review for each individual permit, based on the four factors outlined in the regulations and other relevant factors. This explanation will provide a solid basis in the administrative record for this frequently litigated issue.

²³ For example, USACE may inquire why a transportation agency would eliminate an alternative that the transportation agency has determined meets the established purpose and need, has similar costs and number of relocations as other alternatives, but has notably fewer impacts to aquatic resources. An alternative like this would initially appear practicable and less environmentally damaging under the Section 404(b)(1) guidelines. However, if the transportation agency is able to explain to USACE how the other screening criteria are defined and weighted, such as the presence of Section 4(f) resources or non-wetland critical habitat, presence of federally listed species and designated critical habitat, system linkages, and safety, the USACE will be able to conduct a more thorough and informed analysis of which alternatives are practicable under CWA 404. 2015 Red Book at pp. 16-17.

²⁴ 33 C.F.R. § 325, App’x B(7)(b).

B. "Chokepoints" in CWA Section 404 Individual Permit Process



The ability to obtain Section 404 permits required for construction activities in “Waters of the United States (WOTUS)” is critical to the completion of the private and public infrastructure that forms the literal foundation of the nation’s economy.²⁵ Therefore, administration of the Section 404 regulatory program is important not only to AGC members but to the nation as a whole. Following are details of the main chokepoints that project proponents often encounter during the permit issuance process.²⁶

1. Jurisdictional Determination

For public design-build (or P3) construction projects – where the government is placing responsibility on the general contractor for environmental permitting – it is increasingly common for USACE to require 100 percent ground surveying and full delineation – along with field verification by a USACE District Engineer – before USACE will issue an Approved JD (jurisdictional determination). (Specifically, AGC members have observed that the Corps is moving away from the use of preliminary JDs in favor of Approved JDs for approving 404 permits.) Moreover, USACE staff will not accept NEPA analysis findings. More and more, USACE will not approve a 404 permit without the Approved JD. The USACE’s insistence on better delineation data is holding up the permit issuance process because the general contractor does not have access to the entire project area to perform field studies until well into the construction process (for example, approval of right-of-way acquisitions). As a result, it is impossible to manage cost/risk due to the unknowns regarding project schedule and mitigation responsibilities.

2. Application Adds/Corrections

Applications for major projects requiring 404 permits rarely, if ever, are processed within the time limits set forth in the standard procedures. Agencies can work around strict timelines, including being able to start and stop the clock. If the agency’s decision is that an application is incomplete or denied without prejudice, the applicant will need to resubmit it, which starts a new countdown. Added together, these many sequential clocks can create a lengthy process.

USACE’s increasingly high standards for field data/delineations before it will issue a decision on an application is bringing the permitting process on some large highway projects to a standstill (see #1). Limited access on design-build projects where the contractor is required to purchase the right of way severely limits a contractor’s ability to conduct field delineations in a timely manner – causing excessive delay to the project.

Deadlines also can serve as a negative reinforcement, arguing that some agency staff sit on an application until their allotted time is almost up before looking at it regardless of how minor or simple the task.

3. Public/Agency Input Process

Notice must also be sent to all parties who have specifically requested copies of public notices and to the appropriate officials at the U.S. Environmental Protection Agency (USEPA), the USFWS, the NMFS, and state historic preservation officers. When Section 404, or CWA 401 – see below, applications are

²⁵ These projects generally do not qualify for efficient general permitting procedures and must obtain extremely costly and time-consuming individual permits, on a project-by-project basis.

²⁶ The Corps’ regulatory program regulations at 33 C.F.R. §§ 320-332 set forth the process for issuing Section 404 permits.

submitted, the agencies generally accept public comments regarding the applications for 30 days.²⁷ If, during the initial comment period, someone requests a public hearing regarding the applications, the agencies must issue another public notice scheduling a public hearing at least 30 days into the future.²⁸

Public notice requirements allow project opponents another opportunity beyond NEPA to challenge and stop projects, for which (generally) no contractor relief is provided. Oftentimes, even individuals who are not directly affected by the project become involved. This is presenting an opportunity to voice tangentially related concerns, or pursue political goals or no-growth agendas, thereby forcing the permitting agencies to spend time and resources processing these concerns that ultimately do not have bearing on their permit decision.

4. Related Reviews/Permits

When a Section 404 permit application is submitted to the USACE, the agency typically routes the application to numerous other agencies for review and comment. Section 404 permit applications are routed to USEPA, the USFWS, the state environmental agency, and the state office of historic preservation. The commenting agencies have vast and varied concerns that must be addressed by the applicant. Each requires a slightly different type of alternatives analysis and demands a somewhat distinct conditions, limitations and mitigation approach.

If the concerns of the commenting agencies are not adequately addressed, one or more of the commenting agencies may recommend denying issuance of the requested permit.

Section 404 is a single permit, but it encompasses several other authorizations in a timeline of review:

- Need CWA 401 certification from state before a federal agency can issue a permit or license for an activity that may result in a discharge to WOTUS; state must certify that activity will not violate the water quality standards, or other applicable authorities, of the state (or waive Section 401 certification). [This process, in effect, allows for state control of dredge and fill activities. A state's review of the proposed construction activity will typically address feasible alternatives to the activity, initial and secondary impacts of the proposed activity, mitigation, compliance with water quality standards, stormwater/wastewater impacts, flood management, protection of rare resources, and other factors that would affect water quality.²⁹]
- May need Section 408 authorization (permission from USACE under 33 U.S.C. 408 because project will alter or temporarily or permanently occupy or use a USACE-authorized civil works project).
- USACE consults with the USFWS and/or NMFS (Consultation / Biological Opinion) – Endangered Species Act (ESA) Section 7 consult – if project might affect endangered species. Under the ESA, any project with federal involvement or subject to federal oversight may not adversely affect federally listed species and habitat – otherwise mitigation strategies to minimize the impacts are required. With more than 1,400 species on the list and vast portions of the landscape designated as critical habitat, and many more species and areas of land awaiting listing and

²⁷ 33 C.F.R. § 325.2(d)(2).

²⁸ 33 C.F.R. § 327.11.

²⁹ The level of state responsibility, and autonomy of the state review, vary greatly, from cursory review or waiver of review (with USACE carrying most of the responsibility), to in-office review of draft USACE permits, to a full blown independent technical review by the state, assuming a significant component of program responsibility.

designation decisions, USFWS and NMFS are taking an ever-increasing role in the regulation of infrastructure projects.

- National Historic Preservation Act must account for potential impacts to historical and cultural resources (SHPO Consultation / Antiquities Permits)
- Fishery Conservation and Management Act (Essential Fish Habitat Consultations)
- Depending on location, Coastal Zone Management Act (CZMA Consistency Determination) and Wild Scenic Rivers Act
- Migratory Bird Treaty Act
- Bald and Golden Eagle Protection Act

5. USEPA Veto 404(c) or 404(q) Elevation

The USEPA has the authority to prohibit, deny, or restrict the use of any defined area as a disposal site under Section 404(c), may elevate specific cases for further evaluation under Section 404(q), and enforces Section 404 provisions.

6. Litigation

Agencies are risk-averse, and sometimes choose not to pursue streamlined options out of concern that such “short-cuts” will increase litigation risk. Agencies/projects that face scrutiny from stakeholder groups want to minimize risk by gathering information, at the least to demonstrate due diligence. However, the burden of providing this political protection means asking information that applicants may not be able to obtain, or may be unwilling to share (in the case of proprietary information). Some Districts fear loss of regulatory program funding for staff as a result of having to pay for litigation. In the event litigation costs are borne out of the regulatory program budget—which also funds regulatory staff positions—such a linkage must be removed. To do otherwise feeds into the regulatory staff’s need to create “litigation proof”—or endless reams of—documentation that adds further delay. The fact remains that there is no such thing as “litigation proof” documentation in today’s litigious environment.

7. Permit Conditions

CWA Section 404(b) authorizes USEPA to set the environmental standards that must be met by each permit, for the disposal of dredged or fill material; USEPA’s Section 404(b)(1) guidelines set out at 40 C.F.R. § 230 establish the environmental criteria for evaluating 404 permit applications. Under the guidelines, permittees must complete an alternatives analysis describing how all the practicable alternatives to the proposed project were studied, weighed, and presumably rejected for the preferred project. The agencies regularly request more data, analyses of more sites, and/or other additional information regarding the proposed project and other (presumably) available business opportunities that the applicant could pursue in lieu of the project for which a permit has been requested. The Section 404(b)(1) guidelines also establish a “mitigation sequence” used by USACE: avoid, minimize and compensate impacts.

USEPA’s guidelines often are applied in a rigid one-size-fits-all manner, failing to distinguish between different types of uses or between projects with net habitat gains—despite some damage to existing low-quality habitat—from projects that were simply destructive of habitat. See AGC’s recommended reforms in Part I, Section III.A.2 at page 9 of this letter.

C. Reforms to Ease “Chokepoints” in 404 Program

To help alleviate the “chokepoints” described above, AGC offers the following reforms that are *specific* to the Section 404 permit program.

1. Jurisdictional Determinations: Corp’s Desire to Be “Litigation Proof” Is Unduly Delaying Permitting Process

Some USACE District Engineers *generally* will not accept wetland delineations that were developed during the NEPA process and will hold up project approvals until they have in-the-field surveys collected from the entire project site. The project may be well underway before the design-build contractor has access to 100 percent of the parcels (*e.g.*, right-of-way acquisition goes well into the project). As such, in the pursuit phase of the project, mitigation costs are unquantifiable because the quantity of WOTUS impacts and the quality of the waters impacted is unresolved. This unknown, combined with the lack of wetland bank capacity (see C.4 below), requires contractors to speculate on mitigation costs – which can reach in the hundreds of thousands of dollars per project.

These uncertainties inhibit efforts to optimize construction phasing and schedules and to minimize cost and delay.³⁰ What is more, design-build contracts that transfer the obtaining of Section 404 permits to the contractor generally provide no contractor cost or schedule relief for permitting delays or mitigation costs at the outset of a procurement. This forces contractors to add cost contingencies resulting in higher construction costs to the owner and/or responsible contractors dropping out of the procurement due to untenable risk.

REFORMS: USACE should follow Justice Scalia standards (rather than Kennedy standards) in *Rapanos v. United States*³¹ for determining jurisdictional status. His simple bright-line rule is based on the specific characteristics of the water (or wetland), such as its physical connection to traditionally covered waters and its relative permanence. This clarity maximizes resource allocation to protect the nation’s natural resources, maintains fidelity to the nation’s system of federalism, and reinforces confidence in private land use and development.

AGC further recommends the following:

- Eliminate the 1979 Attorney Civiletti Opinion³² that gives USEPA final authority over CWA jurisdictional determinations, and (by law, regulations, or executive order) give the authority exclusively to the Corps.

³⁰ Creates access and construction phasing issues because no impacts, temporary or permanent, can be taken until the permit is issued. Temporary crossings are held up until the permit is issued; large areas can be inaccessible due to potential WOTUS. Contractor cannot take permanent impacts to construct drainage including culvert crossings, typically a pre-cursor to other construction, and bridges which are long lead time item.

³¹ 547 U.S. 715 (2006).

³² 43 Op. Att’y Gen. 15 (1979) at <https://www.epa.gov/cwa-404/1979-civiletti-memorandum>. After USEPA and the Corps disagreed over which agency had authority to define the scope of WOTUS for purposes of the Section 404 program, the Corps requested the U.S. Attorney General to resolve the dispute.

- Amend the 1989 Memorandum of Agreement (MOA) between USACE and USEPA that establishes practical divisions of responsibility for jurisdictional determinations.³³ The 1989 MOA recognizes that the Corps will make most jurisdictional determinations in the course of administering the 404 program; however, USEPA reserves the authority to determine jurisdiction in “special cases” – and JD’s by either agency are binding on the government as a whole. In fact, both agencies have posted online separate JD Websites.³⁴ This has created confusion and controversy. USACE implements the 404 program and district engineers have the experience and expertise of issuing approximately two million jurisdictional determinations; USACE should make all JDs.
- Revise USACE’s Regulatory Guidance Letter (RGL) 16-01 on the procedures for determining what geographic areas on a project are WOTUS.

In addition, AGC strongly maintains that USACE and other federal permitting agencies should accept NEPA planning-level decisions – including “wetlands determination” and “wetlands delineation” – to support advance mitigation strategies that are both more economical and more effective from an environmental stewardship perspective. To this end, the use of remote sensing, geographic information systems (GIS) mapping software, and decision support systems for evaluating conservation strategies have made it possible to evaluate areas where WOTUS impacts must be avoided and identify areas for mitigation investments very early in the environmental planning process. USACE should revise its guidance documents to clearly state that the potential permit applicant can obtain a Section 404 individual or Nationwide Permit authorization based on a preliminary JD, or even without a JD, at the project proponent’s discretion.³⁵

2. 404 Related Reviews/Permits: Excessive Consult Requirements Are Forcing Sequential Reviews by Multiple Agencies and Duplicative Requests for Project-Specific Information

USACE’s obligation to consult with other agencies on CWA 404 permit applications arises from several legal sources. USACE’s regulations recognize that many additional federal laws are related or applicable to Section 404 permits.³⁶ For example, USFWS has statutory consultation rights under the FWCA and the ESA.³⁷ Through consultation, however, the processing of permit applications is often delayed by the need for complete coordination with other federal agencies. Applicants are generally asked to provide additional information, beyond what was originally submitted, to enable the Corps to satisfy or resolve

³³ Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program and the Application of the Exceptions Under Section 404(f) of the Clean Water Act (Jan. 19, 1989) [hereinafter 1989 MOA].

³⁴ USEPA CWA Approved JD’s Website - <https://watersgeo.epa.gov/cwa/CWA-JDs/> and USACE Regulatory Programs and Permits Website – Corps JD Public Interface http://corpsmapu.usace.army.mil/cm_apex/f?p=340:11:0::NO.

³⁵ The Corps, in RGL 16-01, does not specify any circumstances that require the property owner, developer, or affected party to obtain a JD. Nor does it state if there are circumstances when the Section 404 permit applicant can obtain the permit without a JD. (For example, if contractor cannot get 100 percent access to property until right-of-way is purchased, USACE should use wetland delineations done for NEPA to process 404 permit application.)

³⁶ 33 C.F.R. § 320.3.

³⁷ 16 U.S.C. §§ 661-666c; 16 U.S.C. §§ 1531-1544.

the views of the consulting agencies. Further, USEPA has the authority under Section 404(c) to review individual permits, further explained in #3 below.³⁸

Section 404(q) Memorandum of Agreements (MOA). Pursuant to Section 404(q), the Corps has executed and, from time to time, revised MOAs with USEPA, USFWS, and NOAA within the Department of Commerce. The MOAs establish procedures and time frames for elevating disputes over both specific permit applications and general policy matters.³⁹

REFORMS: USACE must revisit how USEPA, USFWS, and NOAA are using Section 404(q) to dispute 404 permit decisions and request higher authority review by the Office of the Assistant Secretary of the Army for Civil Works; a reevaluation is needed to avoid delay in individual permit applications when interagency disagreements arise. Specifically, USACE should revise the series of interagency MOAs executed in 1992 (between the Corps and the other environmental resource agencies involved in 404 permitting) that provide distinct routes for elevation of policy issues and issues involving specific permit applications. (These MOAs are essentially the same in terms of the process and time frames for elevation.) For the most part, 404(q) has had no appreciable value, either to the proposed project/activity or environmental protection, because most elevation requests do not involve aquatic resources of national importance or unacceptable and substantial impacts to those aquatic resources.

In addition, USACE should re-evaluate and update RGL 92-01, *Federal Agencies Roles and Responsibilities* (May 12, 1992), as needed, based on any changes made to the above-referenced MOAs. While the Corps consults with EPA, the USFWS, and NOAA as part of the permit review process, the Corps retains the ultimately authority to decide whether to issue or deny the Section 404 permit.

Historic Properties. Pursuant to Section 106 of the National Historic Preservation Act (NHPA)⁴⁰ and the Corps' regulations, 33 C.F.R. Section 325 Appendix C - Procedures for the Protection of Historic Properties the Corps must take into account "the effects, if any, of proposed undertakings on historic properties both within and beyond the waters of the U.S." Further, where the undertaking that is the subject of a permit action may directly and adversely affect any national historic landmark, as defined in the NHPA,⁴¹ the Corps shall, to the maximum extent possible, place conditions in permits to minimize harm to such landmarks.⁴² Archaeological sites may also be protected historic properties.

In making these determinations the Corps must consult with the applicable state historic preservation officers and the Federal Advisory Council on Historic Preservation (ACHP or Advisory Council). If there are properties on or eligible for listing on the National Register of Historic Places,⁴³ and if the permitted activities will have an adverse effect on the places, the parties must attempt to enter into an MOA⁴⁴ that contains provisions specifying how the project will be conducted to avoid or mitigate adverse effects on

³⁸ 33 U.S.C. § 1344(c).

³⁹ See e.g., Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army, Concerning Clean Water Act Section 404(q) (Aug. 11, 1992) at <https://www.epa.gov/cwa-404/clean-water-act-section-404qmemorandum-agreement>.

⁴⁰ 16 U.S.C. § 470f (1988).

⁴¹ 36 C.F.R. § 800.2(j).

⁴² *Id.*

⁴³ See 36 C.F.R. § 800.4(b).

⁴⁴ 36 C.F.R. § 800.5(e)(2).

the properties. If no agreement is reached, the Corps may request comments from the Advisory Council. However, the Corps can proceed with the action without accepting the views of the Advisory Council. The commenting authority is extensive, however, and delays caused by reviewing effects on historic properties may defeat a project. In addition, district engineers may add those permit conditions which they determine are necessary to avoid or reduce effects on historic properties.

REFORMS: By new law, amended regulation, or Executive Order, declare that Appendix C, Historic Properties, the regulation used by the Corps to comply with Section 106 of the NHPA, is an agency “Program Alternative” fully compliant with 36 C.F.R. Section 800, thereby ending confusion and controversy, saving considerable time, costs, and litigation, and avoiding arguments over inappropriately expanded scopes of analysis. [Note: In 1979 the ACHP stated in a letter that they collaborated on drafting Appendix C and that it satisfies 106 requirements.] By law, eliminate the ACHP’s independent federal agency status and put them under another federal agency to add discipline and save the costs of significant delays caused by unnecessary and often political controversies that delay projects or involved disputes over expanded permit areas and project scopes (areas of potential effect). In addition, remove the National Trust for Historic Preservation from the Advisory Council on Historic Preservation; they frequently sue federal agencies on Section 106 issues, and therefore, there is a strong perception that they cannot be an objective, fair, and neutral member of the Council.

Endangered Species. The Corps must also consider the effect of permit activities on endangered species. Section 7 of the ESA requires federal agencies to “insure that any action authorized, funded or carried out by such agency ... is not likely to jeopardize ... any endangered or threatened species,” or to adversely affect such species’ critical habitat.⁴⁵ Thus, the Corps must consider how any listed species may be impacted by issuance of a Section 404 permit.

The scope of the analysis of the effects from permit activities on endangered species that is necessary for making Section 404 permit decisions is confusing and controversial. Generally, the Corps assesses permit activity effects only in the permit area. The Corps, however, will assess such effects beyond the immediate permit area in certain situations (*e.g.*, linear projects with multiple 404 permit authorizations).

REFORMS: Establish an expedited review and approval process for ESA review and consultation for Nationwide General Permits by requiring that USFWS and NMFS complete their action in 60-90 days or less under the recognition that activities performed under NWP’s would have no more than minimal environmental effects under ESA, absent strong science and data to the contrary.

Section 401 Water Quality Certification. Applicants for Section 404 permits are required to obtain a certification (from the state in which the discharge originates) that the discharge will not violate the state’s water quality standards under Section 401.⁴⁶ The Corps’ regulations provide that “[n]o permit will be granted until required certification has been obtained or waived.”⁴⁷ A state may waive the water quality certification requirement either expressly or by refusal to act on a certification request within 60 days after receiving the request.⁴⁸ The Corps has discretion to determine a longer period of time is

⁴⁵ See 16 U.S.C. § 1536.

⁴⁶ 33 U.S.C. § 1341(a)(1).

⁴⁷ 33 C.F.R. § 325.2(b)(1)(ii).

⁴⁸ *Id.*

reasonable for the state's review, not to exceed one year.⁴⁹ This waiver period begins when the applicant makes a "valid request" to the state certifying agency, but the Corps' regulations do not define the term "valid request." Permit applicants face substantial uncertainty and inconsistent procedures across various states and Districts with respect to when a "valid request" has been made. In some instances, for example, the certifying state agency will not deem a "valid request" to have been made until the applicant has responded to *numerous requests* for additional information.

Furthermore, the Corps' regulations do not provide any procedure for determining when a state is deemed to have waived its certification right. This has caused confusion over how to effectuate a waiver and has resulted in instances of a state denying a certification long after a waiver should have occurred.

REFORMS: AGC urges the Corps to develop a clear process for Section 401 water quality certification that applies consistently nationwide. The Corps should revise Section 325.2(b)(ii) to clarify that a permit applicant makes a "valid request" (and therefore the one-year waiver time limit begins) on the date an applicant submits its request to the state certifying agency. EPA's regulation governing certification of federally-issued National Pollutant Elimination Discharge System (NPDES) permits, 40 C.F.R. § 124.53(a)(3), provides a good example of language the Corps should adopt. It makes clear that the certification request is made, and the clock for waiver begins, "from the date the draft [federal] permit is mailed to the certifying State agency."

In addition, AGC urges the Corps to amend Section 325.2(b)(ii) to specify the process for effectuating a waiver and make it clear that a state will waive certification if it does not act within one year of the date of the request. These changes would provide much needed consistency, certainty, and predictability for permittees, the Corps, and the state certifying agencies.

3. USEPA's Authority to Veto a Duly Issued Permit Casts Uncertainty on Development

Courts have upheld USEPA's authority under the CWA to change, if not revoke, Section 404 "dredge-and-fill" discharge permits that have already been approved and issued by USACE if it determines that the discharge will have an "unacceptable adverse effect" on identified environmental resources. This creates uncertainties for Section 404 permittees, their lenders, and others in business with them, which drives up financing and construction costs. USEPA has adopted regulations setting forth the process for implementing Section 404(c).⁵⁰

REFORM: Eliminate USEPA's authority to veto a final 404 permit decision made by the Corps and let the result of the evaluation process stand without the extensive delays, costs, and controversy associated with either a veto or a threat of a veto by USEPA (uncertainty, inconsistency, delays, added costs). Direct USEPA to revise its "unacceptable adverse effect" regulations.

4. Mitigation Uncertainty and Risk Is Driving Up Construction Costs

Complex procurement strategies, construction scheduling, habitat modification, and competition for potential mitigation sites can encumber the already challenging task of mitigating for "like" value and

⁴⁹ *Id.*

⁵⁰ See 40 C.F.R. § 231.1 *et seq.*

function. These challenges, routinely faced by AGC members, further reinforce the need for project proponents to examine mitigation strategies *as early as possible*. Yet, there is a shortage of wetland and stream mitigation banking credits in some parts of the country, and many USACE Districts are unwilling to accept in-lieu fee arrangements or they are simply unavailable, as further explained below.

If a permittee cannot secure credits, it will negatively impact construction phasing, schedules and cause excessive cost and delay. What is more, design-build contracts that transfer the responsibility to the contractor to obtain Section 404 permits generally do not provide such contractor with cost or schedule relief for permitting delays or unanticipated mitigation costs that may arise at the outset of a procurement. This forces contractors to add-in cost contingencies upfront that ultimately result in higher construction costs to the owner – and/or responsible contractors dropping out of the procurement due to untenable risk.

AGC's recent examination of the RIBITS (Regulatory In-lieu fee and Bank Information Tracking System) database found limited ILF programs in the Western half of the country – see analysis below. The lack of wetland mitigation alternatives may get worse: AGC predicts that President Trump's recent Executive Order 13778 directing the USEPA and USACE to modify or rescind the 2015 WOTUS rule is likely to stall and further depress the establishment of any new mitigation banks because it is likely that the federal government will eventually relinquish control over work in remote streams and isolated waters/wetlands.

RIBITS (Regulatory In-lieu fee and Bank Information Tracking System) - AGC's Review and Analysis.

RIBITS was developed by USACE with support from USEPA and USFWS to provide better information on mitigation and conservation banking and ILF programs across the country. AGC closely reviewed RIBITS in June 2017. At that time, there were 1,090 approved or pending ILF sites in RIBITS, of which 422 are approved, 352 are pending and the rest are terminated. The site generated a map of the United States, which clearly showed that the Western one-half of the country is woefully underserved. A very cursory sampling of the individual ILF site data showed many sites with no credits available, although AGC understands that RIBITS can be out of date for these details. Also, many sites were small in area, suggesting they were for a single project or client. Even in the East, where ILF sites are more prevalent, the availability of ILF credits is restricted because, like banks, ILF sites are approved for service in one or two watersheds for which they are located.

REFORMS: Eliminate the "Interagency Review Team" for mitigation banks and authorize the Corps to review and approve banks after a simple 30-day review and comment period offered to USEPA, USFWS, and NMFS. This will save considerable time, costs, and reduce staff effort which can be re-directed to expediting permit reviews or other work.⁵¹ To address the lack of mitigation banking capacity in many regions of the country, USACE should develop a national in-lieu fee (ILF) mitigation option whereby sponsors of projects may contribute funding, at mitigation market rates, to a national account when bank credits are unavailable at the time the USACE/USEPA is in position to issue the permit – see AGC's

⁵¹ In November 2000 the Corps, USEPA, FWS, and NOAA issued interagency guidance on the use of in-lieu fees to offset wetland fill impacts (*Fed. Reg.* 65, Nov. 7). That guidance reiterated the Corps' and USEPA's mitigation MOA preference for on-site, in-kind mitigation but recognized that such mitigation may not always be available, practicable, or environmentally preferable. With respect to compensating for impacts from individual permits, the guidance provides that in-lieu fee arrangements may be used if there is a formal agreement that is developed, reviewed, and approved through the interagency Mitigation Bank Review Team (MBRT) process.

recommended national model, as described below. Per AGC's conversations with USACE regulatory program staff, this would require a change to current law that would allow the Corps to receive funds for this purpose. The funding from the national account would be apportioned among the seven USACE Districts base on where impacts were taken and applied toward habitat preservation and promoting banking opportunities.

In addition, USACE should revise the "2008 Mitigation Rule"⁵² at 33 C.F.R. Sections 332.3(b)(2) and (3) to provide greater flexibility to determine appropriate mitigation for wetlands impacts, ILF mitigation banking or alternative processes – thereby allowing for bundling within one agency/applicant.

National Model: In-Lieu Fee Program. The State of North Carolina (NC) operates a state-wide ILF program that may serve as a perfect model for AGC's recommended national program. NC Department of Environmental Quality (DEQ) has operated the state-wide ILF program since the 90's. According to the Website:

DMS offers four voluntary In-Lieu Fee (ILF) mitigation programs to the public and private sectors to satisfy *compensatory-mitigation* requirements in state and federal laws and regulations.⁵³ The initiatives offset unavoidable environmental damage from transportation-infrastructure improvements and other economic development, and help to prevent harmful pollutants from endangering water quality in sensitive river basins.

AGC has learned that NC has a statewide banking instrument with USACE that provides advanced mitigation credits for projects anywhere in the state under the condition that the state submit to the USACE a final mitigation plan within a year and then execute the plan. The state charges the customer on a per credit basis. NC initially developed the program to serve the Department of Transportation's needs but since has expanded the program to public and private customers. The state administers the program with DEQ staff and contract out for the mitigation design and construct. AGC understands the program brings stability and predictability to the credit market, which helps everyone, except for possibly the banks, which are generally run by a handful of companies that object to the competition. To address this the NC legislature recently passed a law requiring DEQ's ILF program to be used only if bank capacity was not available.⁵⁴

5. USACE HQ Must Assert Centralized Control and Oversight Over Stream and Wetlands Valuation Metrics

Several USACE Districts have developed a "functions and values" type of assessment to calculate mitigation ratios for stream and wetland impacts (e.g., Fort Worth and Galveston Districts in Texas, the Charleston District in South Carolina and the Huntington District, West Virginia and the four USACE Offices in Ohio – Huntington, Buffalo, Pittsburg and Louisville). AGC members report that the functions

⁵² In 2008, USACE and USEPA published compensatory mitigation rules (2008 Mitigation Rule). See 73 Fed. Reg. 19,594 (Apr. 10, 2008). While USACE makes the final determination regarding the mitigation conditions included in the permit, USEPA retains the authority to veto the permit if it concludes that the mitigation is not adequate.

⁵³ <https://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/401-wetlands-buffer-permitting/401-certification-isolated-permitting>.

⁵⁴ The program is authorized under NCGS 143-214.8 and the program rules are codified within 15A NCAC 02R. The program Website's at: <https://deq.nc.gov/about/divisions/mitigation-services/about-dms/dms-programs>. Four programs are listed - The Statewide Stream/Wetland Program would serve as the model for a national program.

and values methods are inconsistent among Districts and the mitigation ratios calculated by these methods are generally higher using these function/values methods, than the traditional way of applying a standard mitigation ratio such as 1.5 feet of mitigation for one foot of stream impact (particularly for stream mitigation). The current functions and values methods currently being implemented by many Districts are overestimating stream mitigation credit requirements. As a result, demand for mitigations credits (stream credits in particular) have increased, creating supply shortages in some areas and forcing applicants to delay work on projects waiting for bank credit releases or undertaking permittee-responsible mitigation. (To help alleviate this supply shortage AGC has recommended the USACE implement a national ILF program -- see related discussion in #4 above.)

REFORMS: USACE Headquarters (HQ) should review the methods developed at the District level to determine their reasonableness in calculating mitigation ratios. Instead of each region developing its own method, HQ should develop a standardized method that calculates reasonable mitigation ratios. In the absence of strong oversight and central guidance from Headquarters on important regulatory interpretations, there has been inconsistency among the different Corps Districts in implementing the Corps' CWA Section 404 program. This inconsistency creates uncertainty that makes it difficult for AGC members to navigate the regulatory process, and for the Corps to administer the Section 404 program.

USACE HQ should have clear lines of authority to direct the Districts' implementation of key Corps regulations and policies. Headquarters should not merely make suggestions to be interpreted and implemented by those in the field. Clear guidance and direction from Corps Headquarters is critical for certainty and consistency.

6. Delay on the RHA Section 408 Side Puts Off the CWA Section 404 Review Process and Further Delays Construction

Construction projects are being delayed because of Section 408 burdens.⁵⁵ USACE will *not even begin* to process many CWA Section 404 Nationwide and individual permits until the 408 permission is granted. This means that delay on the River and Harbors Act (RHA) Section 408 side puts off the CWA Section 404 review process and further delays construction. And, many of the reviews required under RHA Section 408 may be reviewed, yet again, under the CWA Section 404 process.

RHA Section 14⁵⁶ provides that the Secretary of the Army may grant permission for the alteration or use of works built by the United States when such occupation or use will not be injurious to the public interest and will not impair the usefulness of such work. As a result, USACE requires that applicable construction projects are reviewed to determine if any of the proposed activities may affect a federal easement, right of way, property, levee, etc. Construction projects possibly subject to this process may include but are not limited to highways crossing Corps' property, bridges built over USACE flood control projects, and simply modification of existing Corps' projects—*e.g.*, levees—by state and local entities.

USACE has recently undertaken action to more rigorously ensure compliance with Section 408, setting forth nine steps to obtain the 408 permission.⁵⁷ Those steps include pre-coordination, written request,

⁵⁵ See http://www.nola.com/environment/index.ssf/2017/05/corps_attempting_to_speed_coas.html; http://www.journalscene.com/news/waiting-on-the-final-leg-of-berlin-g-myers-parkway/article_72b28f28-1309-11e7-a986-1f5ecfa794a9.html.

⁵⁶ 33 U.S.C. § 408.

⁵⁷ USACE Policy - Engineering Circular 1165-2-216.

required documentation (including environmental compliance, if applicable), district-led Agency Technical Review (ATR), Summary of Findings, division review, USACE Headquarters review, notification, and post-permission oversight.

Not all steps are applicable to every RHA Section 408 request, such as the Division or Headquarters office's review. That stated, the Corps requires the RHA Section 408 requester to provide all information that the district identifies as necessary to satisfy all applicable federal laws, executive orders, regulations, policies, and ordinances. In addition, the Corps needs to review the relevant project area under the requirements of NEPA and other environmental statutes (*e.g.*, the Endangered Species Act) where applicable. USACE must also consider factors that may be relevant to the public interest depend upon the type of USACE project being altered and may include, but are not limited to, such things as conservation, economic development, historic properties, cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation. And, the evaluation must consider information received from the interested parties, including tribes, agencies, and the public. AGC is concerned that such rigor has come to make the 408 permission processes redundant, administratively burdensome, and inefficient—especially in the broader context of federal environmental review and permitting.

REFORMS: AGC recommends that USACE undertake the issuance of a new regulation or guidance allowing for the concurrent processing of the RHA Section 408 permission and CWA 404 permit.

As recommended by the National Waterways Conference, AGC agrees that the Corps should clarify the application of Section 408 to “works,” and not undeveloped land or other features of a project, even if owned by the Corps and within the project's boundaries.

- According to the statute, the Corps' permission is required with respect to activities that may affect various “works” that are “built by the United States . . . for the preservation and improvement of any of its navigable waters or to prevent floods.” The Circular states that it applies in the case of any “alteration or occupation or use of the *project*”⁵⁸ (emphasis added).⁵⁹ The language could be and seemingly has been interpreted to suggest 408 applies to any proposal that would alter or occupy any portion of a Corps project, which in turn suggests anything within the project's property boundaries.⁶⁰ However, that is not what Section 408 says, nor is it what Congress intended in enacting Section 14 of the RHA.⁶¹
- A broad reference to a Corps “project” without additional clarification can lead to a District office to require the 408 process for any proposal that involves any real estate within a Corps project.⁶² A common example would be a highway or pipeline that crosses Corps' property.⁶³ To be clear, the Corps has a right to review and approve that proposal as property owner and potentially as a regulator under CWA Section 404 or other authorities.⁶⁴ However, if the project

⁵⁸ See EC 1165-2-216, ¶ 6.a.

⁵⁹ <https://waterways.org/wordpress2/wp-content/uploads/2014/10/NWC-Comments-WRRDA-Webinar-III.pdf>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

does not touch or affect the “works” regulated under Section 408, then the Corps should not overlay additional 408 requirements beyond whatever other procedure may be required.

Specifically concerning local flood control protections, like levees, AGC agrees with the Section 408 Coalition and the Mississippi Valley Flood Control Association: Congress through legislation and/or the Corps via regulation or guidance should clarify that the jurisdiction of RHA Section 408 does not extend to alterations or improvements made or allowed by the local sponsor (non-Federal interests) to the flood control projects for which they are responsible for operation and maintenance.

D. Nationwide General Permits: Acreage Limits and Pre-Construction Notification Thresholds

In the Corps’ own words, “the purpose of the NWP [Nationwide Permit] program is to reduce regulatory delays and burdens on the public, to place greater reliance on state and local controls, and to free our limited resources for more effective regulation of other activities with greater potential to adversely impact the aquatic environment.”⁶⁵ For nearly four decades, the Corps has managed its workload by issuing general permits.⁶⁶ Over time, the Corps has revised the Nationwide Permit (NWP) program to include more, and increasingly stringent, conditions as prerequisites to authorization of general permits. The Corps argues that these additional restrictions and limitations are necessary to ensure authorization of only activities with “minimal impacts.” The Corps makes available individual permits to address those activities with greater impacts. In practice, however, the general permits are now more like individual permits, in terms of the large amount information and data required.

For the construction industry, it is important that the Corps maintain a streamlined permit program that avoids duplication with other federal and state regulatory agencies.⁶⁷ To remain competitive, contractors must adapt quickly to changes due to fluctuating markets, contract revisions, and geological anomalies. The general permit provides the kind of flexibility required for construction jobsites that are temporary and ever changing. What is more, projects can save significantly in both time and money if their activities are authorized by a general permit.⁶⁸

⁶⁵ See 56 *Fed. Reg.* 14,598 at 14,605 (Apr. 10, 1991) (significant proposal to amend the NWP regulations and issue, reissue and modify NWPs).

⁶⁶ NWP are designed to provide an efficient and streamlined approach for authorizing activities with minimal impacts on “waters of the U.S.” with little or no delay or paperwork. 33 C.F.R. § 330.1.

⁶⁷ See 33 U.S.C. § 1344 (q) (requiring the Secretary of the Army to enter into agreements with the Departments of Agriculture, Commerce, Interior and Transportation and the heads of other appropriate agencies to minimize duplication, needless paperwork and delays in the issuance of permits).

⁶⁸ The average time for processing NWPs in 2010 was 32 days, compared to an average of 221 days for processing individual permit applications. See U.S. Army Corps of Engineers, *Reissuance of Nationwide Permits*, 77 *Fed. Reg.* 10184, 10190 (Feb. 21, 2012). Regarding cost, a 2002 study found that the cost of preparing the documentation necessary to undertake activities authorized by a nationwide permit was about 1/10 the cost of preparing the documentation necessary for an individual permit. See David Sunding & David Zilberman, *The Economics of Environmental Regulation by Licensing: An Assessment of Recent Changes to the Wetland Permitting Process*, 42 *Nat. Res. J.* 59, 74 (2002).

REFORMS: AGC recommends that USACE consider increasing the permissible numeric limit, the PCN threshold, and refrain from imposing a linear-foot cap for NWP 3 (Maintenance), NWP 12 (Utility Line Activities), NWP 13 (Bank Stabilization), NWP 14 (Linear Transportation Projects), NWP 35 (Maintenance Dredging Existing Basins), NWP 41 (Reshaping Drainage Ditches) and NWP 43 (Stormwater Management Facilities). These changes would further congressional intent and legal precedent for a streamlined permitting process for projects with minimal adverse environmental effects. The NWPs have strong protections through the District Engineer's prescribed decision process; the agency coordination requirement; general, regional and sometimes "*special-project*" conditions; and a PCN requirement to ensure proper review.

E. Clarify and Expand Exemption for Work in Roadside Ditches

If a ditch is under federal CWA jurisdiction, modifications or disturbance (including certain maintenance) may be subject to CWA Section 404 permitting requirements. CWA Section 404(f)(1)(B) exempts dredge-and-fill activities "for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures." Additionally, the construction or maintenance of irrigation ditches, as well as the maintenance, but not construction, of drainage ditches are exempt activities under CWA 404(f)(1)(C).⁶⁹

REFORMS: Notwithstanding the exceptions noted above, Section 404 permitting requirements can be a significant burden on transportation project development, especially for minor maintenance and construction activities that only impact man-made wetlands or ditches located adjacent to roads. AGC recommends USACE clarify and expand exemptions for activities involving maintenance and/or construction of roadside ditches, emergency activities, impacts on low-quality wetlands within the highway median. This may also require an amendment to 33 C.F.R. Section 325.

PART 2 - RECOMMENDATIONS TO IMPROVE CONTRACTING WITH THE CONSTRUCTION INDUSTRY

I. Partnering

AGC members believe that partnering as committed team members with USACE will improve project execution, staff efficiency (USACE and contractors), safety and trust. During the past five to seven years AGC members have observed a severe reduction in project level partnering. Many have commented that partnering is now the rare exception rather than the rule.

The purpose of partnering is to: (1) keep open the lines of communication and trust between project stakeholders to address issues as they arise; and (2) establish issue resolution procedures among

⁶⁹ More information can be found in the USACE Regulatory Guidance Letter (RGL) 07-02: *Exemptions for Construction or Maintenance of Irrigation Ditches and Maintenance of Drainage Ditches under Section 404 of Clean Water Act*.

stakeholders to help avoid litigation. Partnering helps stakeholders identify potential problems before construction begins, increase project efficiency, reduce project cost and time, and deliver a better project.

The partnering process entails an initial workshop—which could last a day or two, or less, depending upon the size and scope of a project and happen in conjunction with the pre-construction meeting—during which stakeholders discuss the contract terms and identify methods to execute the project in a collaborative manner. This should occur before construction begins. The initial workshop sets the stage for periodic follow-up meetings throughout the life of the project where owner and stakeholders solve ongoing issues and evaluate work performed.

For partnering to be effective, USACE and contractor staffs must be involved. The greatest problem when it comes to partnering is for anyone from the USACE District or Division offices to participate in these meetings on a periodic basis. As a result, there can be a lack of oversight on the project that can lead to problems. Without getting someone with authority to the project or to engage in a proactive manner, problems that could have been addressed often fester until a District or Division office can no longer ignore it. By requiring that USACE engage in proactive, periodic meetings at the District/Division levels, problems can be identified either before they happen or before they become worse.

REFORMS: AGC recommends that USACE leadership encourage partnering at the field level. USACE and contractors should address partnering specifics on a project-by-project approach. The return of investment from partnering is directly proportional to a project's success rate. AGC members are encouraged by USACE issuance of ECB 2017-14⁷⁰ that underlines the importance of partnering. USACE should work to enforce compliance with this ECB and issue more similar directives. AGC recommends that USACE engage in a project level partnering process. AGC suggests USACE issue requirements on all projects that include partnering parameters. Lastly, AGC members support the 3x3x3 process⁷¹ for pre-construction project streamlining on the Civil Works side. USACE should take steps to ensure that actual construction happens with such effective and efficient oversight and communication.

II. Improve Processing and Payment of Contract Change Orders

Construction projects are subject to a wide array of variables that may require a USACE to alter their initial plans through a change order.⁷² Consequently, reasonable delays and changes may be required to meet conditions on the ground. The concern is not that with reasonable delays and changes to the initial contract. Rather, AGC members' concern rests with USACE failing to execute change orders and make payment to contractors for months—and even years—at a time. Unsurprisingly, this delay causes serious harm to the project schedule and has a deleterious impact upon payment to the prime and subcontractors, especially small businesses which depend upon that cash flow to remain in business.

When a USACE fails to process and pay a change order in a timely manner, the contractor is left with few options. In the interim period, the contractor tries—as best as possible—to work around the issue. Depending on the issue, the contractor can be left in the precarious position of either (1) self-financing

⁷⁰ Engineering and Construction Bulletin 2017-14.

⁷¹ Planning Bulletin 2014-01.

⁷² 48 C.F.R. § 42.2.

the work to meet project schedule; or (2) stopping work altogether. Either option brings real problems and threats to businesses. When work must be stopped or slowed down because of untimely processing of change orders, overhead costs remain. If demobilization and remobilization are required, that only adds to unnecessary and inefficient costs related to the use of that equipment. Contractors will go to great lengths to keep the project going, but there are times when the agency issued change orders dictate the schedule.

AGC members further note a lack of direction from USACE during the interim period when the change order is being processed. When change order processing takes an extended period of time, project direction from USACE is necessary to maintain on budget and on time delivery of the project as a whole. This lack of direction generally leaves the contractor at risk to either support the owner or having to pay itself for rework. Problems with issuing change orders force contractors to include the risk of delayed payments in their bid, ultimately costing taxpayers more. USACE should centralize and keep data regarding whether the Contracting Officer had informed the Contractor whether unobligated funds were available to pay the costs of any additional work.⁷³

REFORMS: AGC recommends USACE empower USACE members to solve problems at the lowest organizational level possible. Empowering lower level USACE representatives increases collaboration, limits cost overruns, and keeps projects on schedule. USACE should increase greater transparency in the USACE decision making process—to help allow for greater accountability—during the construction execution phase of project delivery. Additionally, USACE should reduce the links in the chain of command necessary to obtain timely decisions during construction, and reward USACE employees based on project performance. Lastly, USACE should use metrics and data to track and evaluate USACE District Offices that underperform in the processing of change orders. To the extent USACE HQ can use commercially-off the shelf data systems to collect and review data from its jobsites, AGC would support such an effort to help hold all parties accountable. However, AGC does note that USACE should not create any mandate upon the construction industry to utilize one company's software, thereby creating a monopoly for one vendor and forcing an industry to utilize that single vendor's wares.

In addition, to help ameliorate this issue, we recommend modifying DFARS section 252.236-7000 to hold COs accountable for making timely decisions. Specifically, we recommend the inclusion of a new subsections to the provision, stating:

(e) The Contracting Officer shall provide to the Contractor a written acceptance or denial of a proposal for a contract modification no later than:

- (1) Thirty (30) calendar days from receipt of a qualifying proposal with a cost of less than \$250,000;
- (2) Sixty (60) calendar days from receipt of a qualifying proposal with a cost of \$250,000 to less than \$500,000;
- (3) Ninety (90) calendar days from receipt of a qualifying proposal with a cost of \$500,000 to less than \$1,000,000; or
- (4) One hundred-twenty (120) calendar days from receipt of a qualifying proposal with a cost \$1,000,000 or more.

⁷³ 48 C.F.R. § 43.105.

(f) A Contracting Officer shall only deny or request the re-submittal of a Contractor's proposal for contract modification for a material reason.

(g) When a Contracting Officer does not provide to the Contractor a written acceptance or denial of a proposal for a contract modification within the applicable deadlines set forth in paragraph (e), the proposal is denied.

(h) The Contracting Officer shall record in the contract file the date on which it receives from the Contractor any proposal for a contract modification.

Such a provision will help provide some level of accountability to COs to make timely decisions. In the event no decision is reached, contractors can still proceed with a level of certainty that does not currently exist. In addition, it will help provide some record of CO receipts of proposals that could be used to help track CO performance and effectiveness. Lastly, the proposal will help prevent COs from re-starting the clock by denying a proposal or requesting a resubmittal of a proposal based on non-material proposal defects, such as a meaningless typo.

III. Overseas Military Construction

DFARS section 252.236-7010, entitled "Overseas Military Construction – Preference for United States Firms," also known as the "American Preference Policy," establishes a federal government bidding preference for United States (U.S.) firms in the award of construction contracts overseas. This provision allows a 20 percent differential between the bids of U.S. contractors and foreign contractors before the foreign contractor's price would be treated favorably.

The American Preference Policy defines a "United States firm" as a firm incorporated in the United States that complies with the following:

- The corporate headquarters are in the United States;
- The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years, has filed State and Federal income tax returns for 2 years, and has paid any taxes due as a result of these filings; and
- The firm employs United States citizens in key management positions.

Offers from firms that do not qualify as U.S. firms will be evaluated by adding 20 percent to the offer. However, the language in the DFARS does not clarify whether joint ventures (JV) between American firms and foreign firms qualify as a "United States firm" for purposes of applying the American Preference Policy to a joint venture proposal.

In a 2008 U.S. Court of Federal Claims case, *Watts-Healy Tibbits a JV vs. The U.S. and IBC/TOA Corporation*,⁷⁴ the court stated that “the Government should clarify the policy [as it pertains to JVs]” through “guidelines for the source selection personnel” or “definitive regulation establishing some bright lines after both notice and comment as well as agency assessments of what rules or guidelines will really promote the ability of United States contractors to fairly compete in these contracts.”⁷⁵ Such guidance or regulations have not been issued and confusion in the marketplace continues.

This provision must be amended to clearly identify the criteria a joint venture must meet in order to qualify for the 20 percent differential between the bids of U.S. contractors and foreign contractors. Clarification of the provision as it applies to joint ventures will eliminate the current agency practice of evaluating the standard on a contract-by-contract basis and provide consistency within and between DOD agencies and to contractors generally. Failure to clarify this provision as such increases costs to taxpayers through less competition, the incurrence of litigation fees, stayed and delayed contracts, and potential re-solicitation of contracts, among others.

In order for a joint venture to qualify as a “United States firm,” the provision should be amended as such:

OVERSEAS MILITARY CONSTRUCTION--PREFERENCE FOR
UNITED STATES FIRMS (JAN 1997)

(a) *Definition*. “United States firm,” as used in this provision, means a firm incorporated in the United States that complies with the following:

- (1) The corporate headquarters are in the United States;
- (2) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and
- (3) The firm employs United States citizens in key management positions.

A “United States firm” includes a business entity where:

- (1) A United States firm is the majority owner, maintaining at least 51 percent ownership, of the business entity; and
- (2) Fifty-one (51) percent of key management positions in the business entity are employed by the majority owner United States firm.

(b) *Evaluation*. Offers from firms that do not qualify as United States firms will be evaluated by adding 20 percent to the offer.

(c) *Status*. The offeror _____ is, _____ is not a United States firm.

⁷⁴ *Watts-Healy Tibbits a JV vs. The U.S. and IBC/TOA Corporation*, Fed. Cl. (Case No. 08-261C), May 2, 2008, available at:

<https://cases.justia.com/federal/districtcourts/federalclaims/cofcl/1:2008cv00261/23160/26/0.pdf?ts=1294701842>.

⁷⁵ *Id.* At 6-7.

IV. Innovative Project Delivery Methods

AGC appreciates that USACE recognizes the value in undertaking the early contractor involvement (ECI) project delivery method. However, AGC is disappointed that USACE does not utilize this tool often or to its full extent. For example, the U.S. General Services Administration has used its version of ECI—Construction Manager as Constructor (CMc)—regularly and with successes for more than a decade. It is AGC’s understanding that the DFARS blocks experimentation or effective use of ECI.

REFORM: USACE should undertake regulatory action needed to level the DFARS playing field so that it can undertake ECI as GSA undertakes CMc.

V. Safety Officer Accreditations

AGC members are committed to a safe construction workplace and considers the promotion of construction safety as a part of the association’s core mission. Over last several years AGC members, and the construction industry at large, have made credible and tangible improvements to workplace safety. While it is important to help promote a culture of safety in the construction industry, it is important that USACE have reasonable requirements for Site Safety & Health Officers (SSHO).

Currently, USACE requires a SSHO to have a Certified Safety Professional (CSP) certification, ten years construction experience, and five years similar experience in particular to the construction project.⁷⁶ For example, if a contractor is building a large office building for USACE, the agency requires SSHO to have five years of experience in supervising safety on other large office building construction projects. The combination of these three requirements can be very difficult for contractors to meet. These requirements will often force the contractor to choose between reassigning a SSHO from one project to another. However, oftentimes contractors are left with little choice but to hire a third-party consultant that can meet USACE’s SSHO requirements. Incorporating third-party consultants have the unintended consequence of increased costs while reducing value. While it may be easy for some companies to provide SSHO with experience on certain projects, it can be particularly onerous and burdensome on less common projects and for small business contractors.

REFORMS: USACE should reform the five-year similar experience requirement to allow for greater flexibility for contractors to meet the SSHO requirements. USACE should consider that many SSHO skills are fungible and experienced SSHO are capable of supervising a diverse array of projects. This can be done by creating a threshold number of years of experience in construction safety experience that would waive the five years similar experience requirement. For example, it would make little sense to bar a SSHO of thirty years from a USACE project simply because the SSHO does not have five years’ experience in that type of construction project. Lastly, USACE should allow for greater flexibility of SSHO experience for unique, or less common, USACE projects where it would be difficult for contractors to find SSHOs who are experienced in that particular type of project.

⁷⁶ EM 385-1-1.

VI. Quality Control System

Currently, USACE uses the Quality Control System Module (QCS Module) on all USACE construction projects. However, AGC members have seen USACE expand the use of QCS Module from its original purpose. USACE now uses QCS Module not only to keep track of quality control functions but most other project management functions, such as payment processing, daily reports, submittals, schedule updates, etc. AGC members report that several hours are required for contractors to input daily reports into the QCS Module. The QCS Module antiquated system is extremely slow and antiquated. Often submission of monthly requisitions requires an overnight upload time.

REFORMS: USACE should return to the original function of the QCS Module by only requiring information related to quality control functions, and prohibit the inclusion of other project management functions.

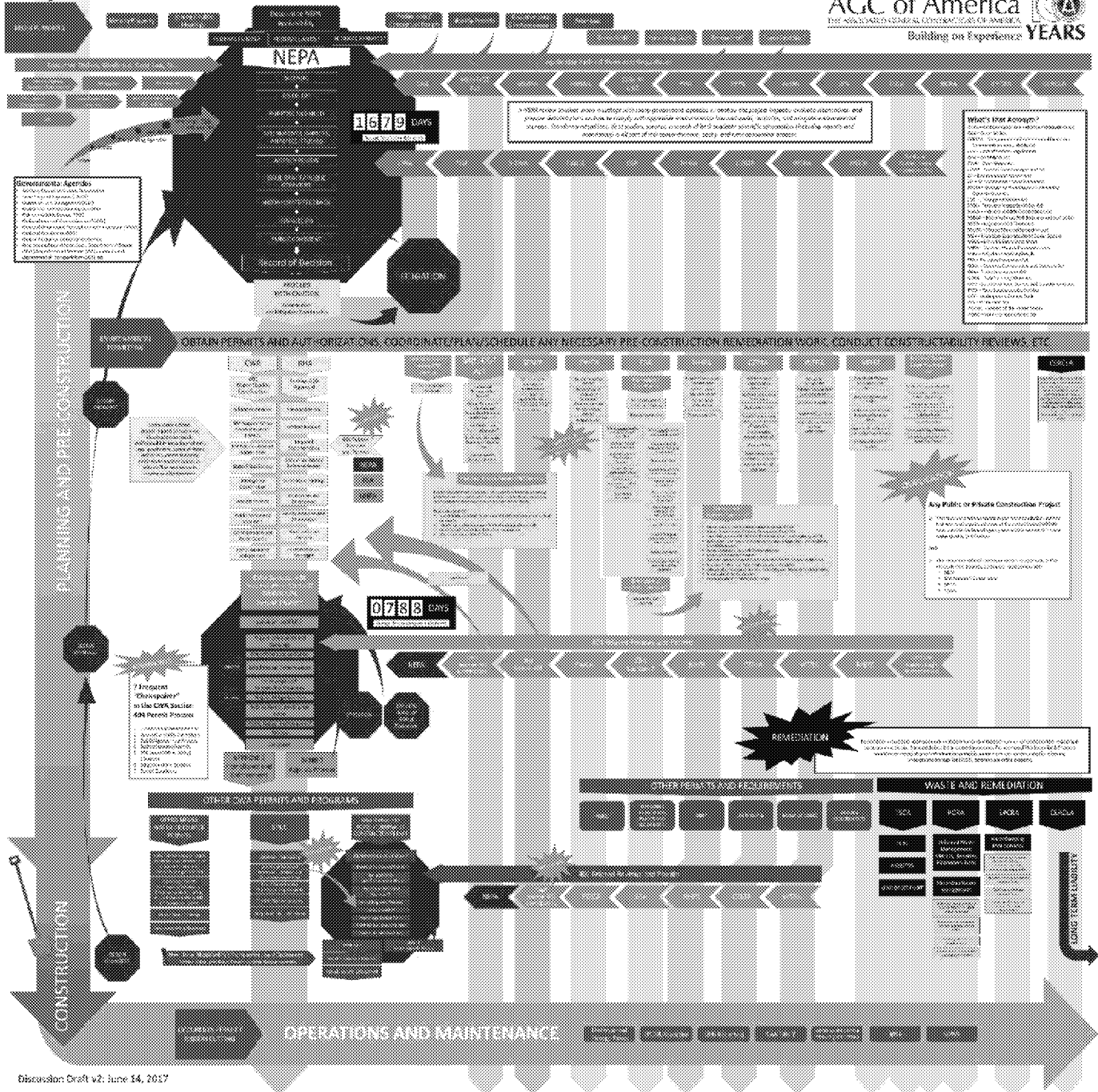
CONCLUSION

AGC appreciates the opportunity to share our insights with you and to help advance our common goals of fair competition and of economic and efficient performance of USACE construction projects. If you would like to discuss this matter with us further, please do not hesitate to contact AGC of America.

APPENDIX A - FEDERAL ENVIRONMENTAL REVIEW AND PERMITTING FLOWCHART

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AGC of America **100**
 THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
 Building on Experience YEARS



(Full file version available upon request to AGC's Director of Environmental Services
 Melinda Tomaino at tomainom@agc.org)

Message

From: Greenwalt, Sarah [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6C13775B8F424E90802669B87B135024-GREENWALT,]
Sent: 4/14/2017 8:12:25 PM
To: Chris Hornback [CHornback@nacwa.org]
CC: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Re: Meeting

Sorry Chris, my scheduler has been out.

I've got you down for Thursday, April 20th at 10am. Looking forward to seeing you.

Sent from my iPhone

On Apr 14, 2017, at 4:09 PM, Chris Hornback <CHornback@nacwa.org> wrote:

Sarah – We are holding 10am on the 20th. Please confirm when you can.

Thanks.

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)
(O) Ex. 6 (M) Ex. 6 chornback@nacwa.org

<image001.png>National Pretreatment Workshop | May 16 – 19, 2017, San Antonio, TX

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From: Greenwalt, Sarah [mailto:greenwalt.sarah@epa.gov]
Sent: Wednesday, April 12, 2017 4:34 PM
To: Chris Hornback <CHornback@nacwa.org>
Cc: Brown, Byron <brown.byron@epa.gov>
Subject: RE: Meeting

Chris,

Thank you for your patience. We've been trying to coordinate schedules over here. Are your folks still available to meet next Thursday, April 20th at either 10 or 11am? Also, I just want to note for you that the Administrator will be out of the office next week and so you will be meeting with myself and Byron, who is our Deputy Chief of Staff for Policy.

Sarah A. Greenwalt
Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency
Work: 202-564-1722 | Cell: Ex. 6
Greenwalt.Sarah@epa.gov

From: Chris Hornback [mailto:CHornback@nacwa.org]
Sent: Tuesday, April 4, 2017 10:11 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: RE: Meeting

Thanks Sarah. We'd like to get this nailed down as soon as possible so our members can make their travel arrangements. Several of our key staff are out of the office next week, so if we can confirm this week that would be great.

-Chris

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)
(O) [Ex. 6] (M) [Ex. 6] chornback@nacwa.org

From: Greenwalt, Sarah [mailto:greenwalt.sarah@epa.gov]
Sent: Monday, April 3, 2017 9:13 AM
To: Chris Hornback <CHornback@nacwa.org>
Subject: RE: Meeting

I think those dates will work nicely. My assistant will schedule something concrete and confirm.

Thanks!

Sarah A. Greenwalt
Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency
Work: 202-564-1722 | Cell: [Ex. 6]
Greenwalt.Sarah@epa.gov

From: Chris Hornback [mailto:CHornback@nacwa.org]
Sent: Tuesday, March 28, 2017 2:11 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Hupp, Sydney <hupp.sydney@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Washington, Valerie <Washington.Valerie@epa.gov>
Subject: RE: Meeting

Sarah –

Thank you for getting back to us. We plan to bring a couple of our key leaders into town to meet with the Administrator, so mid-April would be the earliest we could make work. Here are some potential days/times. We would request an hour for the meeting.

April 18 – 9am, 10 am, 12pm or 1pm
April 19 – Anytime
April 20 – 9, 10, 11, 12, 1 or 2
April 21 – Anytime

Let me know if any of these times might work.

-Chris

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)
(O) [Ex. 6] (M) [Ex. 6] chornback@nacwa.org

From: Greenwalt, Sarah [<mailto:greenwalt.sarah@epa.gov>]
Sent: Tuesday, March 28, 2017 10:31 AM
To: Chris Hornback <CHornback@nacwa.org>
Cc: Hupp, Sydney <hupp.sydney@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Washington, Valerie <Washington.Valerie@epa.gov>
Subject: Meeting

Mr. Hornback,

Thank you for reaching out. We would be delighted to get something on the calendar. Do you have a date in mind?

Best,

Sarah A. Greenwalt
Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency
Work: 202-564-1722 | Cell: [Ex. 6]
Greenwalt.Sarah@epa.gov

Message

From: Chris Hornback [CHornback@nacwa.org]
Sent: 4/20/2017 7:14:02 PM
To: Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]; Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
CC: Adam Krantz [AKrantz@nacwa.org]; Nathan Gardner-Andrews [NGardner-Andrews@nacwa.org]
Subject: Thank You

Sarah, Byron –

Thanks again for your time today. We enjoyed meeting you and starting a dialogue on these issues.

Please let us know if we can be helpful on anything in the near term, and we'll be in touch soon with our list of thoughts on regulatory reform.

-Chris

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)
(O) [Ex. 6] | (M) [Ex. 6] | chornback@nacwa.org

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Message

From: Chris Hornback [CHornback@nacwa.org]
Sent: 4/14/2017 8:09:26 PM
To: Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]
CC: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: RE: Meeting

Sarah – We are holding 10am on the 20th. Please confirm when you can.

Thanks.

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)
(O) Ex. 6 | (M) Ex. 6 | chornback@nacwa.org



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From: Greenwalt, Sarah [mailto:greenwalt.sarah@epa.gov]
Sent: Wednesday, April 12, 2017 4:34 PM
To: Chris Hornback <CHornback@nacwa.org>
Cc: Brown, Byron <brown.byron@epa.gov>
Subject: RE: Meeting

Chris,

Thank you for your patience. We've been trying to coordinate schedules over here. Are your folks still available to meet next Thursday, April 20th at either 10 or 11am? Also, I just want to note for you that the Administrator will be out of the office next week and so you will be meeting with myself and Byron, who is our Deputy Chief of Staff for Policy.

Sarah A. Greenwalt

Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency
Work: 202-564-1722 | Cell: Ex. 6
Greenwalt.Sarah@epa.gov

From: Chris Hornback [mailto:CHornback@nacwa.org]
Sent: Tuesday, April 4, 2017 10:11 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: RE: Meeting

Thanks Sarah. We'd like to get this nailed down as soon as possible so our members can make their travel arrangements. Several of our key staff are out of the office next week, so if we can confirm this week that would be great.

-Chris

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)
(O) Ex. 6 (M) Ex. 6 | chornback@nacwa.org

From: Greenwalt, Sarah [<mailto:greenwalt.sarah@epa.gov>]
Sent: Monday, April 3, 2017 9:13 AM
To: Chris Hornback <CHornback@nacwa.org>
Subject: RE: Meeting

I think those dates will work nicely. My assistant will schedule something concrete and confirm.

Thanks!

Sarah A. Greenwalt
Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency
Work: 202-564-1722 | Cell: Ex. 6
Greenwalt.Sarah@epa.gov

From: Chris Hornback [<mailto:CHornback@nacwa.org>]
Sent: Tuesday, March 28, 2017 2:11 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Hupp, Sydney <hupp.sydney@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Washington, Valerie <Washington.Valerie@epa.gov>
Subject: RE: Meeting

Sarah –

Thank you for getting back to us. We plan to bring a couple of our key leaders into town to meet with the Administrator, so mid-April would be the earliest we could make work. Here are some potential days/times. We would request an hour for the meeting.

April 18 – 9am, 10 am, 12pm or 1pm
April 19 – Anytime
April 20 – 9, 10, 11, 12, 1 or 2
April 21 – Anytime

Let me know if any of these times might work.

-Chris

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)
(O) Ex. 6 (M) Ex. 6 | chornback@nacwa.org

From: Greenwalt, Sarah [mailto:greenwalt.sarah@epa.gov]
Sent: Tuesday, March 28, 2017 10:31 AM
To: Chris Hornback <CHornback@nacwa.org>
Cc: Hupp, Sydney <hupp.sydney@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Washington, Valerie <Washington.Valerie@epa.gov>
Subject: Meeting

Mr. Hornback,

Thank you for reaching out. We would be delighted to get something on the calendar. Do you have a date in mind?

Best,

Sarah A. Greenwalt

Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722 | Cell: Ex. 6

Greenwalt.Sarah@epa.gov

Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 5/3/2017 3:50:27 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Re: Meeting with Laura Skaer, Matt Ellsworth and Ron McMurray

We got here early. At the guard desk now

Laura Skaer
Sent from my iPhone

On May 3, 2017, at 10:48 AM, Brown, Byron <brown.byron@epa.gov> wrote:

The entrance is above the federal triangle metro stop, on 12th street between Pennsylvania and Constitution. Please enter the north building, and send me an email when you arrive at the guard desk.

From: Laura Skaer [<mailto:lskaer@miningamerica.org>]
Sent: Wednesday, May 3, 2017 8:00 AM
To: Brown, Byron <brown.byron@epa.gov>
Subject: Re: Meeting with Laura Skaer, Matt Ellsworth and Ron McMurray

Yes,

At the main EPA building?

Laura Skaer
Sent from my iPhone

On May 3, 2017, at 7:28 AM, Brown, Byron <brown.byron@epa.gov> wrote:

Can we do 12:15?

From: Laura Skaer [<mailto:lskaer@miningamerica.org>]
Sent: Wednesday, May 3, 2017 7:24 AM
To: Brown, Byron <brown.byron@epa.gov>
Subject: Re: Meeting with Laura Skaer, Matt Ellsworth and Ron McMurray

Byron,

Are we confirmed for meeting today? 11:30 or 12 noon?

Thanks

Laura Skaer
Sent from my iPad

On May 2, 2017, at 11:37 AM, Laura Skaer <lskaer@miningamerica.org> wrote:

Byron,

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Thanks

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Sent from my iPhone

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From: Laura Skaer [<mailto:lskaer@miningamerica.org>]
Sent: Friday, April 28, 2017 4:10 PM
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Subject: Meeting with Laura Skaer, Matt Ellsworth and Ron McMurray

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Hi Byron,

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Thanks.

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www.themoreyoudig.com
@MiningAmerica
@TheMoreYouDig

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Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 5/3/2017 3:36:41 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Re: Meeting with Laura Skaer, Matt Ellsworth and Ron McMurray

Matt Ellsworth, our government affairs manager and Ron McMurray of the Livingston group are with me.

Laura Skaer
Sent from my iPhone

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Subject: Re: Meeting with Laura Skaer, Matt Ellsworth and Ron McMurray

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www.themoreyoudig.com
@MiningAmerica
@TheMoreYouDig

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<image001.jpg>

Message

From: Mason, Christina [christinamason@aia.org]
Sent: 5/16/2017 8:30:06 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Thank you and Contact info

Byron,

Thank you for meeting with us earlier. I didn't get a chance to give you my card, so wanted to pass along my contact information. Please let me know if I can be helpful in any way. Happy to chat or come in anytime as needed.

And thank you for grabbing my portfolio for me!

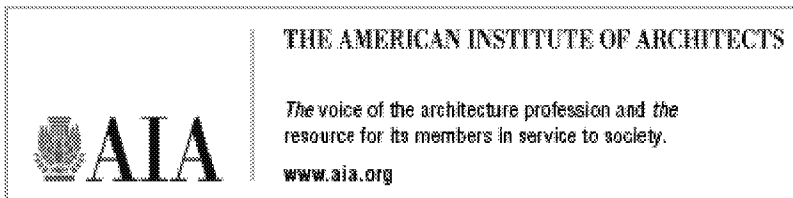
Best,
Christina

Christina M. Mason

Director, Federal Relations
The American Institute of Architects

1735 New York Avenue, NW
Washington, DC 20006-5292
Telephone: **Ex. 6**
Fax: 202-626-7583
christinafinkenhofers@aia.org
www.aia.org

The American Institute of Architects is the voice of the architectural profession and a resource for its members in service to society.



Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 5/3/2017 3:34:57 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Re: Meeting with Laura Skaer, Matt Ellsworth and Ron McMurray

Will do

Laura Skaer
Sent from my iPhone

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@TheMoreYouDig

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Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 5/3/2017 11:59:31 AM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Re: Meeting with Laura Skaer, Matt Ellsworth and Ron McMurray

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Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 11/21/2017 6:14:39 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Report language on CERCLA 108(b)

Hi Byron,

Check out pages 68-69 of the Report Language for the Senate Interior and Related Agencies Appropriations bill.

Laura Skaer
Executive Director
American Exploration & Mining Association
10 N Post St Ste 305
Spokane WA 99201
(509)-624-1158 **Ex. 6**
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@TheMOreYouDig

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Message

From: Chris Hornback [CHornback@nacwa.org]
Sent: 5/25/2017 1:48:33 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]; Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]
Subject: NACWA's Regulatory Review Comments
Attachments: EPA-HQ-OA-2017-0190_NACWA Comments.pdf

Byron, Sarah –

Apologies for not sending these sooner, but we wanted to share NACWA's formal input in response to the Agency's Evaluation of Existing Regulations effort.

Many of these issues are not new and have been discussed with EPA staff for many years, but we did sit down with Mike Shapiro and other key water office staff to brief them before we sent these in. We hope to find some areas that we can work on together.

Happy to discuss any of these items further. If you can make it through the first 4-5 pages, that really covers the highlights.

Thanks,
Chris

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)
(O) [Ex. 6] (M) [Ex. 6] | chornback@nacwa.org

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County Water

Utility Authority

Albuquerque, NM

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Adel H. Hagekhalil

Assistant Director

City of Los Angeles -

LA Sanitation

Los Angeles, CA

CHIEF EXECUTIVE OFFICER

Adam Kranz

May 15, 2017

Sarah Rees

Director, Office of Regulatory Policy and Management

Office of Policy

1200 Pennsylvania Ave, NW MC 1803A

Washington, D.C. 20460

Via *Regulations.gov*

RE: Docket ID EPA-HQ-OA-2017-0190 – Evaluation of Existing Regulations

Dear Ms. Rees,

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on Docket ID EPA-HQ-OA-2017-0190, a request for comment on the evaluation of existing EPA regulations (82 Fed. Reg 17793; April 13, 2017). NACWA represents the interests of the nation's public wastewater treatment utilities or clean water agencies.

NACWA's utility members are the front-line public stewards safeguarding the nation's water quality, so it is critical to understand that the goal of the Association's engagement in this public comment process is not to pursue regulatory rollbacks or weakening of the Clean Water Act (CWA). Such actions would be counter to NACWA's goals and objectives as an organization. Instead, NACWA's focus is on identifying those areas that may help clean water utilities meet their environmental and public health responsibilities in a more effective and efficient manner.

Recent momentum among clean water utilities to embrace the concept of the Water Resources Utility of the Future (UOTF) guides NACWA's advocacy efforts with EPA and Congress. The UOTF initiative embodies the spirit of innovation and efforts to go beyond simply complying with the CWA, but it also seeks to remove hurdles to utility innovation and to ensure that utilities can most effectively serve their communities and ratepayers by ensuring the best environmental and public health return for each ratepayer dollar invested – with an overall focus on net environmental benefit outcomes. Regulatory reform is not just about removing unnecessary or duplicative regulations, it is also about making improvements to the existing rules and regulations to ensure greater consistency.

The issues described below have been identified by NACWA members as ways to enhance their ability to provide flexible and affordable local approaches while at the same time achieving their goals to protect the environment and public health more effectively and cost-efficiently. Many of the issues raised by NACWA members have developed as EPA has interpreted the CWA and promulgated new regulations over the years. As such, there are options for resolving these through regulatory improvement and modifications. At the same time, some of these issues can also be resolved by Congress via targeted modifications to the CWA (or another environmental statute). In some cases, the issues raised by NACWA's members can only be resolved by Congress through revisions to the underlying statutory authority. We have included these areas to provide a comprehensive view of the challenges the clean water community faces and the opportunities to make improvements that could enhance the effectiveness of our operations.

Overarching Recommendations for Improvement

The Integrated Planning (IP) Framework developed by the previous administration has proven to be an important tool for clean water utilities to plan and sequence their investments in a manner that minimizes the financial impact on the local community while maximizing the environmental benefit for each dollar invested. More importantly, the IP Framework is an acknowledgement that local governments and public clean water utilities are partners with EPA and the states in achieving the goals of the CWA and need to be given more control over the prioritization and pace of their water infrastructure investments. NACWA urges EPA and Administrator Pruitt to reaffirm this commitment to work with their local partners and to look for ways to further expand this important partnership through integrated planning and in all its interactions with the public clean water community and local governments as a whole.

Nowhere is this need for greater collaboration with local partners more evident than in the Agency's approach to enforcement. For more than a decade, wet weather issues including combined sewer overflows (CSOs), sanitary sewer overflows (SSOs) and stormwater have been identified as a priority for EPA's enforcement office. This has led to more than 120 federal wet weather consent decrees imposing billions of dollars of spending to address these issues. The water quality challenges these decrees target are real and in some cases enforcement may be necessary, but EPA must begin to lead with true compliance assistance, to help communities come into compliance, instead of defaulting to an enforcement posture.

In addition to reviewing its regulations and adjusting its approach to enforcement, EPA must also examine its impact outside of the regulatory sphere. For example, EPA must acknowledge that many of the actions it takes under the CWA, though not regulatory in nature, can have very real and costly impacts on the regulated community, including clean water utilities.

An excellent example of this are EPA's water quality criteria recommendations. While EPA has previously asserted that it cannot consider cost in developing these recommendations and that they have no direct cost impacts, the recommendations, combined with EPA's implementation practices, do have significant impacts. While states have the lead on developing water quality standards based on EPA's recommendations, the federal criteria are often used by default. And where states may look to deviate from the national recommendations, EPA has often worked behind the scenes to influence state decision-making to conform with federal policy preferences. This has also happened in other situations including human health criteria and whole effluent toxicity testing. In these contexts, EPA's recommendations or guidance often become de facto regulations – without going through proper federal notice and comment procedures – that impose very real cost implications

on clean water utilities. These types of non-regulatory actions must also be subjected to review for potential reform.

Recommendations for Improving Implementation of Clean Water Requirements

Some of the recommendations discussed below may require a mix of EPA and Congressional action, but EPA can make significant improvements in current implementation without changes to the underlying statute.

1. Secure more flexibility in how affordability issues are addressed by EPA and considered at the local level, and secure integrated planning approaches as a key tool available to all clean water utilities in both the permitting and enforcement contexts. Consistent with the IP Framework, refocus EPA's efforts away from establishing enforcement priorities for the clean water community toward working with utilities to provide compliance assistance.

Affordability and integrated planning issues continue to be a top priority for clean water utilities across the country. NACWA has focused considerable efforts and resources on these issues over the past five years and will continue to do so.

While significant progress has been made in recent years on both integrated planning and affordability, including two EPA framework documents addressing these issues, more must be done. Most importantly, greater use of integrated planning and more accurate affordability considerations must be available to any clean water utility in any permitting or enforcement context. EPA's acceptance of these tools must not be discretionary or subject to change on a whim. NACWA is already working hard on bipartisan legislation that would enshrine integrated planning principles in the CWA, along with more appropriate and reasonable affordability considerations, and this will continue as a top Association priority regardless of any other regulatory improvement initiatives.

2. Ensure that all EPA actions that can impose new regulatory burdens on clean water utilities – such as water quality criteria, new test methods, TMDLs, and any other new requirements – be established through full and formal public notice and comment that includes cost-benefit and net environmental benefit considerations. Accomplishing this goal would involve both EPA action and changes to the CWA, which we hope EPA would support.

There are many actions EPA takes that can impact regulated municipal utilities and have real cost implications. But not all these actions must go through the full public review process required for regulations or be examined through a net environmental benefit lens to evaluate whether the new requirement will in fact result in an improvement in water quality and not have negative impacts on other water or broader environmental areas. As discussed above, EPA publishes water quality criteria pursuant to Section 304(a) to reflect the best scientific information available. These criteria are a critical part of water quality standards. Courts have determined that EPA is not required to follow the public notice and comment requirements of the Administrative Procedure Act before publishing these criteria. TMDLs are developed pursuant to Section 303(d) of the CWA for impaired waters, and they, too, significantly affect

the establishment of effluent limits in National Pollutant Discharge Elimination System (NPDES) permits.

In consideration of the importance of the development of water quality criteria and TMDLs, and their subsequent impact on effluent limits in NPDES permits, the public should have the opportunity to provide and have relevant information – including cost-benefit and net environmental benefit analyses – considered when they are being developed. Any new test methods or procedures or other requirements that have an impact on NPDES permit compliance should also go through the same review process. Regulation via guidance or policy memos that establish additional non-discretionary requirements on permittees should also be subjected to full notice and comment review.

3. Modify the existing approach to wet weather permitting, consistent with the IP Framework, to ensure clean water utilities can fully evaluate and consider the best expenditure of their resources. Establish reasonable guidelines for SSO design standards to allow for a rational, permit-based approach to addressing SSOs.

EPA's interpretation of the CSO policy and stormwater regulations and its enforcement-driven approach to implementation have cost utilities millions of dollars in legal fees and billions of dollars for expensive upgrades for treatment and storage facilities that may be used only occasionally during periods of peak wet weather flows. The integrated planning and related affordability frameworks are helping to give utilities more control over the sequencing of these expenditures to prioritize those investments that result in the greatest environmental benefit, but more must be done to recognize that some of these investments may not result in dramatic or even measurable improvements in water quality or human health protection.

The lack of clarity concerning the definition and appropriate regulation of SSOs has resulted in inconsistent standards and enforcement. In some instances, SSOs have been considered violations of NPDES permits under the "proper maintenance" requirements, regardless of whether they discharge to a water of the U.S. The lack of a reasonable design standard or criteria to address SSOs and "hybrid" systems (systems intended to perform as two-pipe combined systems, but not currently covered by the CSO Control Policy) has resulted in substantial expenditures by utilities, without necessarily obtaining commensurate measurable water quality improvements. Utilities should be afforded a "safe harbor" so that they are not penalized for events beyond their control, potentially through the use of a design standard or through changes in current permitting approaches. Consideration should also be given to the water quality impacts or lack thereof of SSOs when evaluating whether they are a violation of the CWA.

4. Establish a consistent policy on blending by applying the 8th Circuit Decision nationwide to ensure the federal requirements applicable to clean water utilities are clear and uniform regardless of where they may be located.

EPA's current position that peak wet-weather management techniques such as blending constitute a bypass is not consistent with the CWA and ignores long-established, sound engineering practices aimed at maximizing the amount of wastewater that is treated during wet weather while maintaining water quality in receiving waters at the highest levels practicable.

5. Encourage greater use of wet weather water quality standards instead of applying dry-weather criteria in extreme weather situations.

While states currently have this authority, wet weather water quality standards are rarely used or face fierce opposition from environmental groups. These temporary, time-limited standards can provide important relief for utilities while maintaining water quality protections during the bulk of the year. Rather than applying a water quality standard that was designed to protect human health and/or aquatic life at times of low flow during extreme rain events, wet weather water quality standards recognize that attempting to meet those more stringent standards is a waste of limited resources. EPA should find ways to encourage and incentivize states to take advantage of this existing flexibility in the CWA.

6. Revise the WQS regulations and/or issue a policy statement to provide greater support for watershed-based solutions, including regional watershed initiatives, watershed permits and water quality trading.

EPA and some states have recognized the value of watershed-based solutions, including the need to consider watershed based permits, to account for upstream and downstream impacts. Some efforts at watershed based permits have been successfully implemented, but the administrative complexities and legal constraints have not facilitated this process. Similarly, EPA has sought to promote trading by issuing guidance, but like watershed-based permitting, some view existing CWA language as impeding a full use of this approach. Watershed based solutions, including permits and trading, can be particularly useful to address nutrient concerns and should be a regular consideration in the permitting process.

7. Allow for NPDES permit terms to extend beyond five years if a permittee so desires to allow for greater certainty and long-term investment planning. Where longer permit terms are not available, increase the use/availability of compliance schedules to provide utilities with more time to achieve water quality standards. Where permits cannot be issued for more than five years, consider automatic renewal if no significant changes have occurred necessitating different permit limits.

The five-year permit term established by the CWA was appropriate 45 years ago as part of a new national water discharge permitting program when no one knew with certainty whether or how that program would succeed. It is well-settled that the NPDES permitting program has been a great success in improving water quality throughout the country. Its substantive and procedural requirements are generally well-established and well-understood in the regulated community.

For mature utilities that have been subject to NPDES permits for decades, a five-year permit term can impede the utility's ability to plan, develop and implement successful long-term strategies necessary to make rational technical and financial decisions to meet the requirements

of the CWA. The environmental value, if any, of requiring such utilities to prepare permit applications and complete the permitting process every five years does not justify the time and expense necessary. Moreover, NPDES permits can always be modified if new information or conditions arise that would justify mid-term changes to protect the environment.

States and EPA should be allowed to issue NPDES permits longer than five years, if requested, to a municipal permittee during the permit application process. In addition, and especially where permit terms remain at five years, the use of compliance schedules over multiple permit terms to achieve water quality standards should be clarified, expanded, and encouraged. Alternatively, if there have been no significant changes in the receiving water body, state regulations, or the nature of the discharge, there should be an option for automatic permit renewals every five years.

8. Revise water quality standards regulations to allow for increased use of existing CWA tools (e.g., use attainability analyses) and provide more flexibility for states to address designated uses and criteria for certain parameters (including pathogens and nutrients) and other matters that warrant greater local/site-specific consideration (e.g., urban watersheds where a fishable/swimmable goal may not be achievable at all times or alternative approaches to numeric nutrient criteria).

Ensure states are allowed to take the lead on policy decisions regarding water quality standards and NPDES permit requirements and reduce attempts by EPA to influence state decision-making processes to ensure state standards conform to federal policy preferences.

The 1972 CWA provided relatively little guidance to EPA concerning the development of water quality standards. Section 303(c)(2)(A) provided that when a state adopts or revises a water quality standard, the standard is to consist of the designated uses and the water quality criteria for the waters, based upon those uses. The standards are to protect public health or welfare, enhance water quality, and serve the purposes of the Act, and are to be established taking into consideration their use and value for various designated uses.

EPA has, over the years, promulgated detailed regulations for states to follow when adopting water quality standards, and the procedures by which the states must incorporate those standards into individual NPDES permits. The CWA allows EPA to determine "whether the standard meets the requirements" of the CWA, and if not, allows EPA to promulgate the standard in lieu of the state.

In promulgating its regulations, EPA has significantly restricted the ability of the states to make their own determinations with regard to water quality standards, especially around issues that are site-specific and could benefit from more innovative, local solutions. For example, current regulations contain a rebuttable presumption that all states' waters would be designated fishable and swimmable unless the state submitted documentation justifying why those waters would be designated for any other uses. 40 CFR 131.10. While such a presumption is an important aspirational goal, there is increasing concern from many stakeholders that it is not realistic for many current urban watersheds and that a different target is appropriate. But

current regulations allow changes in designated uses only upon a showing of widespread social and economic costs, among other things.

By regulation, EPA decided that "existing uses" must be uses or potentially achievable uses as of November 28, 1975. EPA has regulated that effluent limitations in permits generally be based on 7Q10 (low flow conditions) instead of typical or average flows, and is seeking to prevent states from allowing mixing zones in certain areas. These are a just a few of the regulatory requirements that EPA has promulgated that do not give states flexibility to make decisions based on their local knowledge and site-specific conditions, including conditions that occur during wet weather events.

When the CWA was enacted in 1972, States had varying degrees of technical expertise and political will to develop and implement water quality permitting measures. The CWA authorized EPA to develop water quality criteria and programs, and to authorize states that demonstrated the legal, technical and financial capability to administer those programs to do the same. EPA also was given the authority to approve or disapprove states' water quality standards, TMDLs and NPDES permits to provide national consistency, technical assistance and oversight to states as they began to develop their own programs.

In the intervening 45 years, states have developed considerable expertise and have shouldered the load in developing water quality standards and in issuing permits. Nonetheless, EPA's "oversight" has in some cases increased and has been administered with varying degrees of sensitivity to the desires of state regulators and local and regional differences.

9. Address concerns with the reasonable assurance principle by modifying the TMDL program requirements to provide that effluent limitations in NPDES permits derived from TMDL waste load allocations must be consistent with the relative contributions of that permittee to the impairment of water quality in a water body and that effluent limits based on an approved TMDL will only be set at a level where they reasonably can be expected to contribute to the attainment of water quality. If not automatic, such an approach could be used in an adaptive management framework that could use a cost-benefit analysis and not impose more stringent allocations/permit limits on point sources until nonpoint source contributions have been addressed.

EPA has taken the position that where both point and nonpoint sources contribute to the impairment of a water body, a facility's waste load allocation is based, in part, on considerations of nonpoint source load reductions for which there are "reasonable assurances that nonpoint source control measures will achieve expected load reductions." In other words, for the TMDL to be approvable, unless there are reasonable assurances that the nonpoint sources will achieve specific load reductions, NPDES permittees bear the entire burden of reducing pollutant loadings to achieve the TMDL's objectives. This can result in more stringent discharge limits and costs for utilities that will achieve little or no improvement in water quality because the impairment is being caused primarily by nonpoint sources.

10. Anti-backsliding provisions of the CWA and implementing regulations should be amended to allow NPDES permits to include less stringent limits in certain, limited circumstances, for example when new data and information indicate that the receiving water can safely accommodate an increased loading, and if water quality standards will not be exceeded or no significant adverse effects on the designated uses are anticipated. Current backsliding provisions discourage voluntary or early action to improve treatment processes to address additional pollutants.

The 1987 Water Quality Act added Sections 402(o) and 303(d)(4) to incorporate anti-backsliding provisions. These provisions, and their implementing regulations, 40 CFR 122.44 and 122.62(a), significantly constrain the ability of the permitting authority to adjust NPDES permit conditions upon permit renewal or modification when new information indicates that the receiving water can accommodate an increased discharge and create unnecessary conservatism in the permitting process. These provisions discourage voluntary or early action to make improvements in treatment processes to remove additional pollutants. There should be an evaluation whether permitting assumptions are appropriate and an ability to change those assumptions when they are not needed regardless of previous permitting decisions. If circumstances are such that changes in permit limits could be included and would not otherwise cause a violation of water quality standards, or cause significant adverse effects on the designated uses, permit limits that are less stringent than the prior permit should be allowed.

Regulations Needing Repeal or Modification

1. Repeal 40 CFR Part 503, Subpart E, which is now duplicative and in some instances in conflict with the provisions of the new Sewage Sludge Incinerator (SSI) Maximum Achievable Control Technology (MACT) regulations. Remove unnecessary Clean Air Act requirements (40 CFR part 61, subpart E) as referenced in 503.43(c) and 40 CFR Part 60 Subpart O that are no longer relevant given the new SSI MACT Standards.

EPA's Office of Air and Radiation has made it clear that 40 CFR Part 503, Subpart E is no longer relevant and not as protective of public health as the SSI MACT regulations promulgated in 2011. Currently, more than 100 clean water utilities are required to comply with the provisions in both rules, requiring different monitoring and reporting. The Clean Air Act provisions in Part 60, Subpart O and Part 61, Subpart E, are similarly now duplicative or unnecessary given the new MACT standards for SSIs.

EPA should also review and consider revisions to its definition of solid waste to encourage and enable greater energy recovery from SSIs.

2. In line with the water sector's move toward the Utility of the Future, revise existing biosolids regulations and/or develop a new regulatory structure to ensure that products derived from the wastewater treatment process are regulated based on their final quality and not on their source.

More and more utilities are creating beneficial products from their wastewater treatment process, including improved quality of biosolids, recovered resources like nutrients and struvite,

and recycled/reclaimed water. In Europe, these resources are acknowledged as products that are not appropriate for control under rules established for wastes. In the U.S., EPA has made progress issuing policy statements allowing some flexibility with these materials, but more certainty is needed to further spur resource recovery and encourage innovation at clean water utilities.

3. Modify existing NPDES permit regulations to allow for more flexibility in establishing permits limits (e.g., new approaches like stochastic permitting).

Meeting single number, not to exceed permit limits requires utilities to operate their plants to achieve levels significantly lower than established permit limits to ensure there is a sufficient margin of safety and that there are no exceedances. New techniques including stochastic permitting and new technologies, including sensors, will enable new permitting approaches that provide a range of values within which the discharge will be considered in compliance. This type of flexibility may require a rethinking of how permit limits are derived, but it will allow utilities to run their treatment plants more efficiently and cost effectively.

4. Revise the 1997 affordability guidance to eliminate reliance on median household income consistent with the Agency's 2014 affordability framework.

NACWA has sought revisions to EPA's 1997 affordability guidance (Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development) for more than a decade. While EPA's 2014 affordability framework document has addressed many of NACWA's concerns – including reliance on median household income as the sole indicator of affordability – the framework is still characterized as an addendum to the original guidance. In practice, EPA's regional offices continue to use the guidance as the starting point in affordability negotiations and utilities are often pressured into performing the calculations in the guidance to evaluate spending levels versus median household income levels.

5. Revise current pretreatment regulations or seek other mechanisms to automatically apply the Non-Significant Categorical Industrial User (NSCIU) provisions of the Pretreatment Streamlining Rule nationwide, including in Authorized States that currently have not incorporated all of the Streamlining Rule.

EPA adopted the Pretreatment Streamlining Rule in response to an earlier presidential effort to reduce burdensome regulations. Since promulgation of the rule, however, several Authorized States have yet to revise their state regulations to incorporate key provisions, including the NSCIU category, which has the potential to save utilities significant time and resources.

Recommendations Regarding EPA's Organizational Structure & Enforcement Priorities

EPA should consider organizational changes to return primary enforcement authority and personnel to the program offices. In addition, EPA should evaluate the return of delegated authority for certain actions from Regional offices to Headquarters, but at the very least improve coordination between Regional offices and Headquarters to ensure greater consistency nationwide. Additionally, EPA should provide compliance and

technical assistance to utilities with potential CWA violations before initiating formal enforcement actions, especially with smaller utilities.

EPA enforcement personnel often interpret regulations, policies and permit requirements differently, and in conflict with the program office personnel who write those program requirements and regulations and who interface regularly with the regulated community. This subjects permittees to uncertainty, unnecessary risk and potential enforcement action. EPA regional offices also sometimes interpret regulatory requirements differently from one another, subjecting permittees in different regions to inconsistent regulatory requirements and interpretation, contrary to the intent of the CWA.

In addition, EPA often brings enforcement actions against utilities for compliance violations without first providing any help or assistance for the utility to come into compliance. This is a particular challenge for smaller utilities that may not have the resources or technical capacity to address compliance shortcomings. If EPA were required to first provide compliance and technical assistance to at-risk utilities and only initiate enforcement proceeding if the assistance is unsuccessful, potential CWA violations could be addressed in a much more timely and cost-effective manner for all parties involved.

Again, thank you for the opportunity to provide input into improving the regulations that implement the Clean Water Act and related statutes. NACWA's members are not interested in losing the gains in water quality from the past four decades that they have played a significant role in achieving. The thoughts above were identified as opportunities to improve the current system to enable greater environmental and public health protection – with a focus on net environmental benefit outcomes – while also maximizing use of ratepayer dollars.

NACWA looks forward to discussing these issues further with the administration. Please contact Chris Hornback, NACWA's Chief Technical Officer at chornback@nacwa.org, or Nathan Gardner-Andrews, NACWA's Chief Advocacy Officer at ngardner-andrews@nacwa.org, with any questions or to set up a time to discuss.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Krantz", with a stylized flourish at the end.

Adam Krantz
CEO

Message

From: Chris Hornback [CHornback@nacwa.org]
Sent: 4/13/2017 1:14:09 AM
To: Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]
CC: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Re: Meeting

Thanks Sarah. We'd like to confirm for 10am on the 20th. Thanks

Sent from my iPhone

On Apr 12, 2017, at 4:34 PM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

Chris,

Thank you for your patience. We've been trying to coordinate schedules over here. Are your folks still available to meet next Thursday, April 20th at either 10 or 11am? Also, I just want to note for you that the Administrator will be out of the office next week and so you will be meeting with myself and Byron, who is our Deputy Chief of Staff for Policy.

Sarah A. Greenwalt

Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722 | Cell: Ex. 6

Greenwalt.Sarah@epa.gov

From: Chris Hornback [<mailto:CHornback@nacwa.org>]
Sent: Tuesday, April 4, 2017 10:11 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: RE: Meeting

Thanks Sarah. We'd like to get this nailed down as soon as possible so our members can make their travel arrangements. Several of our key staff are out of the office next week, so if we can confirm this week that would be great.

-Chris

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)
(O) Ex. 6 | (M) Ex. 6 | chornback@nacwa.org

From: Greenwalt, Sarah [<mailto:greenwalt.sarah@epa.gov>]
Sent: Monday, April 3, 2017 9:13 AM
To: Chris Hornback <CHornback@nacwa.org>
Subject: RE: Meeting

I think those dates will work nicely. My assistant will schedule something concrete and confirm.

Thanks!

Sarah A. Greenwalt

Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722 | Cell: **Ex. 6**

Greenwalt.Sarah@epa.gov

From: Chris Hornback [<mailto:CHornback@nacwa.org>]

Sent: Tuesday, March 28, 2017 2:11 PM

To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Cc: Hupp, Sydney <hupp.sydney@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Washington, Valerie <Washington.Valerie@epa.gov>

Subject: RE: Meeting

Sarah –

Thank you for getting back to us. We plan to bring a couple of our key leaders into town to meet with the Administrator, so mid-April would be the earliest we could make work. Here are some potential days/times. We would request an hour for the meeting.

April 18 – 9am, 10 am, 12pm or 1pm

April 19 – Anytime

April 20 – 9, 10, 11, 12, 1 or 2

April 21 – Anytime

Let me know if any of these times might work.

-Chris

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)

(O) **Ex. 6** | (M) **Ex. 6** | chornback@nacwa.org

From: Greenwalt, Sarah [<mailto:greenwalt.sarah@epa.gov>]

Sent: Tuesday, March 28, 2017 10:31 AM

To: Chris Hornback <CHornback@nacwa.org>

Cc: Hupp, Sydney <hupp.sydney@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Washington, Valerie <Washington.Valerie@epa.gov>

Subject: Meeting

Mr. Hornback,

Thank you for reaching out. We would be delighted to get something on the calendar. Do you have a date in mind?

Best,

Sarah A. Greenwalt

Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722 | Cell: Ex. 6

Greenwalt.Sarah@epa.gov

Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 9/21/2017 9:12:35 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Meeting with Laura Skaer

Hi Byron,

I'm going to be in DC October 2-4 and would like to meet with you and possibly Patrick Davis on CERCLA 108(b). I am available anytime on Monday October 2; any time after 12 noon on Wednesday Oct 4; and any time before 2:15 on Thursday October 5. I'm not available on Tuesday October 3 unless that is the only time you can meet.

Thank you!

Best,

Laura Skaer
Executive Director
American Exploration & Mining Association
10 N Post St Ste 305
Spokane WA 99201
(509)-624-1158 **Ex. 6**
lskaer@miningamerica.org
www.miningamerica.org
www.themoreyoudig.com
[@MiningAmerica](#)
[@TheMOreYouDig](#)

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Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 5/2/2017 1:08:50 AM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Re: Meeting with Laura Skaer, Matt Ellsworth and Ron McMurray
Attachments: ATT00001.txt

Either one will work. Let me know

Laura Skaer
Sent from my iPhone

On May 1, 2017, at 7:38 PM, Brown, Byron <brown.byron@epa.gov> wrote:

Hi Laura – would Wednesday at 11:30 am or 12 noon work?

From: Laura Skaer [<mailto:lskaer@miningamerica.org>]
Sent: Friday, April 28, 2017 4:10 PM
To: Brown, Byron <brown.byron@epa.gov>
Subject: Meeting with Laura Skaer, Matt Ellsworth and Ron McMurray

Byron,

I know you're swamped, but hoping there will be time to meet with you next week.

thanks

Hi Byron,

I hope you are enjoy your new gig. Our government affairs manager Matt Ellsworth and I will be in DC May 1 through May 4 and would like to meet with you to discuss CERCLA 108(b). Our DC representative, Ron McMurray with the Livingston Group will join us. With the exception of Monday morning and Wednesday from 2 to 3 pm, our schedule is open right now.

Thanks.

Laura Skaer
Executive Director
American Exploration & Mining Association
10 N Post St Ste 305
Spokane WA 99201
509-624-1158 **Ex. 6**
lskaer@miningamerica.org
www.miningamerica.org
www.themoreyoudig.com
@MiningAmerica
@TheMoreYouDig

MINING – AMERICA'S INFRASTRUCTURE STARTS HERE

<image001.jpg>

Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 4/24/2017 9:24:32 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Meeting with Laura Skaer, Matt Ellsworth and Ron McMurray

Hi Byron,

I hope you are enjoy your new gig. Our government affairs manager Matt Ellsworth and I will be in DC May 1 through May 4 and would like to meet with you to discuss CERCLA 108(b). Our DC representative, Ron McMurray with the Livingston Group will join us. With the exception of Monday morning and Wednesday from 2 to 3 pm, our schedule is open right now.

Thanks.

Laura Skaer
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www.themoreyoudig.com
@MiningAmerica
@TheMoreYouDig

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Message

From: Chris Hornback [CHornback@nacwa.org]
Sent: 5/8/2017 3:47:47 PM
To: Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]
CC: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]; Adam Krantz [AKrantz@nacwa.org]; Nathan Gardner-Andrews [NGardner-Andrews@nacwa.org]
Subject: Re: Thank You

Great. I'll send a calendar appt with dial in for tomorrow at 4pm.

-Chris

Sent from my iPhone

On May 8, 2017, at 11:32 AM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

I am also available tomorrow at 4pm.

Sarah A. Greenwalt

Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722 | Cell: Ex. 6

Greenwalt.Sarah@epa.gov

From: Brown, Byron
Sent: Monday, May 8, 2017 10:33 AM
To: Chris Hornback <CHornback@nacwa.org>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Adam Krantz <AKrantz@nacwa.org>; Nathan Gardner-Andrews <NGardner-Andrews@nacwa.org>
Subject: RE: Thank You

Tuesday at either 2 pm or 4 pm works for me.

From: Chris Hornback [<mailto:CHornback@nacwa.org>]
Sent: Monday, May 8, 2017 9:21 AM
To: Brown, Byron <brown.byron@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Adam Krantz <AKrantz@nacwa.org>; Nathan Gardner-Andrews <NGardner-Andrews@nacwa.org>
Subject: Re: Thank You

Byron - If you still want to connect, tomorrow (Tuesday) afternoon could work for Adam. Let us know and we can work on scheduling.

-Chris

Sent from my iPhone

On May 5, 2017, at 8:17 AM, Chris Hornback <CHornback@nacwa.org> wrote:

Byron – The early part of next week is a little crazy on our end, but a call at 9 or 10 am Monday could work for Adam and Nathan. I'm traveling that morning and likely won't be available.

Let us know if one of those two times work.

-Chris

From: Brown, Byron [<mailto:brown.byron@epa.gov>]
Sent: Thursday, May 4, 2017 9:18 PM
To: Chris Hornback <CHornback@nacwa.org>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Adam Krantz <AKrantz@nacwa.org>; Nathan Gardner-Andrews <NGardner-Andrews@nacwa.org>
Subject: RE: Thank You

Hi Chris – I wanted to follow up to have a more detailed discussion about your ideas for incentivizing investment, public private partnerships, and integrated planning. Would you have time Monday morning or Tuesday? – Byron

Byron R. Brown
Deputy Chief of Staff for Policy
Office of the Administrator
U.S. Environmental Protection Agency

From: Chris Hornback [<mailto:CHornback@nacwa.org>]
Sent: Thursday, April 20, 2017 3:14 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Cc: Adam Krantz <AKrantz@nacwa.org>; Nathan Gardner-Andrews <NGardner-Andrews@nacwa.org>
Subject: Thank You

Sarah, Byron –

Thanks again for your time today. We enjoyed meeting you and starting a dialogue on these issues.

Please let us know if we can be helpful on anything in the near term, and we'll be in touch soon with our list of thoughts on regulatory reform.

-Chris

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)
(O) [Ex. 6] (M) [Ex. 6] chornback@nacwa.org

<image001.png> National Pretreatment Workshop | May 16 – 19, 2017, San Antonio, TX

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Message

From: Matt Ellsworth [ellsworth@miningamerica.org]
Sent: 8/21/2017 8:36:08 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
CC: Burley, Veronica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b317a1f564e34528915a2809fe81d832-Burley, Veronica]
Subject: RE: Meeting Time

Byron, I heard back that Henry will be out of DC that week, any chance you are around?

From: Matt Ellsworth
Sent: Tuesday, August 8, 2017 10:31 AM
To: 'brown.byron@epa.gov' <brown.byron@epa.gov>; 'darwin.henry@epa.gov' <darwin.henry@epa.gov>
Subject: Meeting Time

Byron/Henry, I am going to be in DC the week of September 11th with the Vice-Chair of the AEMA Board of Trustees Adam Hawkins of Arizona. Are either or both of you available anytime Wed Sept 13 or Thurs Sept 14 before 2pm? We would like to update on CERCLA 108(b) primary matter. Not second to Adam's desire to bring some AZ back there to Henry!

Thank you for the consideration.



Matthew Ellsworth
Government Affairs Manager
American Exploration & Mining Association

Office: 509-624-1158; **Ex. 6**
www.MiningAmerica.org

Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 5/1/2017 11:38:44 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Automatic reply: Meeting with Laura Skaer, Matt Ellsworth and Ron McMurray

I am out of the office until May 8. If this is a media inquiry, contact Devon Coquillard, dcoquilaard@miningamerica.org. For all other assistance email Deanna Stroh at dstroh@miningamerica.org. I will respond as time permits.

Message

From: Chris Hornback [CHornback@nacwa.org]
Sent: 5/8/2017 1:20:57 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]; Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]
CC: Adam Krantz [AKrantz@nacwa.org]; Nathan Gardner-Andrews [NGardner-Andrews@nacwa.org]
Subject: Re: Thank You

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-Chris

Sent from my iPhone

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-Chris

From: Brown, Byron [mailto:brown.byron@epa.gov]
Sent: Thursday, May 4, 2017 9:18 PM
To: Chris Hornback <CHornback@nacwa.org>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Adam Krantz <AKrantz@nacwa.org>; Nathan Gardner-Andrews <NGardner-Andrews@nacwa.org>
Subject: RE: Thank You

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Byron R. Brown
Deputy Chief of Staff for Policy
Office of the Administrator
U.S. Environmental Protection Agency

From: Chris Hornback [mailto:CHornback@nacwa.org]
Sent: Thursday, April 20, 2017 3:14 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Cc: Adam Krantz <AKrantz@nacwa.org>; Nathan Gardner-Andrews <NGardner-Andrews@nacwa.org>
Subject: Thank You

Sarah, Byron –

Thanks again for your time today. We enjoyed meeting you and starting a dialogue on these issues.

Please let us know if we can be helpful on anything in the near term, and we'll be in touch soon with our list of thoughts on regulatory reform.

-Chris

Chris Hornback | Chief Technical Officer | National Association of Clean Water Agencies (NACWA)
(O) Ex. 6 (M) Ex. 6 | chornback@nacwa.org

<image001.png> National Pretreatment Workshop | May 16 – 19, 2017, San Antonio, TX

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Message

From: Laura Skaer [lskaer@miningamerica.org]
Sent: 1/23/2018 12:00:57 AM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: RE: Laura in DC

Let's do 2:30. I understand about the State of the Union. Let's stay in touch and adjust if necessary. I will move some other appointments if I have to.

See you next week.

Laura Skaer
Executive Director
American Exploration & Mining Association
lskaer@miningamerica.org

From: Brown, Byron [mailto:brown.byron@epa.gov]
Sent: Monday, January 22, 2018 3:48 PM
To: Laura Skaer <lskaer@miningamerica.org>
Subject: RE: Laura in DC

Yes as of now 2 or 2:30 pm works but I note that is the same day as the state of the union and some other matters. Don't think they will affect meeting but just wanted to give you fair warning and we'll do our best to accommodate each other's schedules. Have a safe trip.

From: Laura Skaer [mailto:lskaer@miningamerica.org]
Sent: Monday, January 22, 2018 4:53 PM
To: Brown, Byron <brown.byron@epa.gov>
Subject: RE: Laura in DC

Hi Byron,

Have you been able to confirm a time on the afternoon of the 30th? I'm available any time after 2 pm.

Thanks

Laura Skaer
Executive Director
American Exploration & Mining Association
lskaer@miningamerica.org

From: Brown, Byron [mailto:brown.byron@epa.gov]
Sent: Tuesday, January 16, 2018 8:40 AM
To: Laura Skaer <lskaer@miningamerica.org>
Subject: RE: Laura in DC

Hi Laura – I should have some free time Jan. 30. Are there any times that day that work for you?

From: Laura Skaer [mailto:lskaer@miningamerica.org]
Sent: Tuesday, January 9, 2018 12:56 PM

To: Brown, Byron <brown.byron@epa.gov>

Subject: Laura in DC

Hi Byron,

Happy New Year!

I'll be in DC from Jan 29 through Feb.1 and would like to schedule a meeting with you at your convenience. My schedule is pretty wide open at this point in time.

Thank you

Laura Skaer
Executive Director
American Exploration & Mining Association
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(509)-624-1158 **Ex. 6**
lskaer@miningamerica.org
www.miningamerica.org
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Message

From: Brown, Byron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9242D85C7DF343D287659F840D730E65-BROWN, BYRO]
Sent: 9/22/2017 8:27:10 PM
To: Laura Skaer [lskaer@miningamerica.org]
Subject: RE: Meeting with Laura Skaer

Let's try the morning of Oct. 2. I should be free either 10 am or 11 am.

From: Laura Skaer [mailto:lskaer@miningamerica.org]
Sent: Thursday, September 21, 2017 5:13 PM
To: Brown, Byron <brown.byron@epa.gov>
Subject: Meeting with Laura Skaer

Hi Byron,

I'm going to be in DC October 2-4 and would like to meet with you and possibly Patrick Davis on CERCLA 108(b). I am available anytime on Monday October 2; any time after 12 noon on Wednesday Oct 4; and any time before 2:15 on Thursday October 5. I'm not available on Tuesday October 3 unless that is the only time you can meet.

Thank you!

Best,

Laura Skaer
Executive Director
American Exploration & Mining Association
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